United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF AND APPENDIX

76-1340

To be argued by
JEFFREY I. GLEKEL

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1340

UNITED STATES OF AMERICA,
Appellee,

—v.—

JAMES D. HANLON, COSTAS NASLAS, AND PAUL KATRITSIS,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX FOR THE UNITED STATES OF AMERICA

ROBERT B. FISKE, JR.,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

JEFFREY I. GLEKEL,
MARC MARMARO,
FREDERICK T. DAVIS,
Assistant United States Attorneys,
Of Counsel.

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BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

James D. Hanlon, Costas Naslas, and Paul Katritsis appeal from judgments of conviction entered on July 26, 1976, in the United States District Court for the Southern District of New York, after a two week trial before the Honorable Milton Pollack, United States District Judge, and a jury, on charges contained in Indictment 75 Cr. 515 and Information 75 Cr. 1176.

Indictment 75 Cr. 515, filed May 30, 1975, charged Hanlon, Naslas and Katritsis and seven other defendants variously in 127 counts with misapplication of bank funds in violation of Title 18, United States Code, Section 656 and 2; acceptance of gratuities by a bank officer in exchange for procuring loans in violation of Title 18, United States Code, Sections 215 and 2; false statements in violation of Title 18, United States Code, Sections 1001 and 2;

false statements in connection with obtaining bank loans in violation of Title 18, United States Code, Sections 1014 and 2; false entries in bank reports in violation of Title 18, United States Code, Sections 1005 and 2; wire fraud in violation of Title 18, United States Code, Sections 1343 and 2; obstruction of justice in violation of Title 18, United States Code, Sections 1503 and 2; and conspiracy in violation of Title 18, United States Code, Section 371.*

Information 75 Cr. 1176, filed on December 4, 1975, charged Naslas and four other defendants in six counts with the receipt of and aiding and abetting the receipt of

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* The seven other defendants named in Indictment 75 Cr. 515 were as follows: Charalambos Amanatides, also known as "Harry Amanatides;" Amilcas Ion Livas, also known as "A. Ion Livas;" Michael Blonsky; Gregory Spartalis; Joseph Metzger; John J. Shevlin and Michael A. Panayotopulos. Amanatides, Livas, Blonsky and Spartalis failed to appear for arraignment and are fugitives. The trial of Metzger was severed from that of Hanlon, Naslas and Katritsis and was held before Judge Pollack and a jury between March 29 and April 9, 1976. Metzger was found guilty of the wilful misapplication of bank funds as charged in Counts 40, 41, 42 and 77 and acquitted on Counts 39, 53, 55, 74, 119 and 129. On June 1, 1976, Judge Pollack sentenced Metzger to concurrent terms of three years imprisonment on Counts 40, 41, 42 and 77. Metzger's conviction was affirmed from the bench by this Court on October 21, 1976. Counts 38, 52, 54, 69, 71, 72, 73, 85, 88, 89, 92, 93, 100, 107, 108, 110, 114, 115, 116, 117 and 118, in which Metzger was also charged, were severed prior to his trial.

Shevlin pleaded guilty on November 14, 1975, to Count 34 of Indictment 75 Cr. 515, which charged him with making false statements in connection with a bank loan and to Information 75 Cr. 1097, which charged him in one count with the receipt of money in exchange for the granting of bank loans, in violation of Title 18, United States Code, Section 215. On July 7, 1976, imposition of sentence was suspended and Shevlin was placed on probation for five years.

Panayotopulos entered a guilty plea to Count 126 of Indictment 75 Cr. 515 on April 25, 1976, and on July 16, 1976 was fined $1500.

commissions and gifts by bank officers for procuring loans, in violation of Title 18, United States Code, Sections 215 and 2, and conspiracy, in violation of Title 18, United States Code, Section 371.* Four other individuals entered guilty pleas to informations in related cases.**

The trial of Hanlon, Naslas and Katritsis began on June 2, 1976, and concluded on June 16, 1976, when the jury found Hanlon guilty of conspiracy as charged in Counts 36, 51, 65, and 67, wire fraud as charged

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* The four other defendants named in Information 75 Cr. 1176 are Amanatides, Livas, Spartalis and Metzger. Metzger was acquitted on all six counts of the information at the trial before Judge Pollack conducted from March 29 to April 9, 1976.

** Mark Scufalos pleaded guilty to both counts of Information 75 Cr. 1060 which charged him with making false statements in connection with obtaining loans in violation of Title 18, United States Code, Section 1014 and on July 8, 1976, was fined $5,000 on each count by Judge Pollack.

Nico Cotzias pleaded guilty to Information 75 Cr. 1128 which charged him in one count with making false statements in connection with financial statements of Tidal Marine International Corporation in violation of Title 15, United States Code, Sections 78 and 78ff(a); Title 17, Code of Federal Regulations, Sections 240.106-5b; and Title 18, United States Code, Section 2. On June 4, 1976, Judge Pollack fined Cotzias $500.

Stanley Farber pleaded guilty to Information 76 Cr. 402, which charged him in one count with making a false statement to the Securities Exchange Commission in violation of Title 18, United States Code, Sections 1001 and 2. On August 31, 1976, Judge Pollack fined Farber $2500 and placed him on probation for a period of two years.

Francis A. Marone pleaded guilty to Information 76 Cr. 436 which charged him in one count with overvaluing security in connection with a bank loan, in violation of Title 18, United States Code, Section 1014. On July 16, 1976, Judge Pollack sentenced him to two years imprisonment, with all but four months suspended, to be followed by two years probation. A fine of $2,500 was also imposed. Marone is presently serving his sentence.

in Counts 10, 18 and 22, and false statements in connection with obtaining bank loans as charged in Counts 56, 57, 66, 68, 75 and 76; Naslas guilty of conspiracy as charged in Counts 51, 62, and 65, and false statements in connection with obtaining bank loans as charged in Counts 63, 66 and 76; and Katritsis guilty of conspiracy as charged in Counts 51 and 65; and false statements in connection with obtaining bank loans as charged in Counts 56, 57, 58, 59 and 66.*

The jury also found Naslas guilty of conspiracy and aiding and abetting the receipt of money by bank officers for procuring loans as charged, respectively, in Counts 1 and Counts 3 and 4 of Information 75 Cr. 1176. Naslas was acquitted on Count 5 of the information.

On July 26, 1976, Judge Pollack sentenced Hanlon to concurrent terms of five years imprisonment on Counts 10, 18, 22, 36, 51, 65 and 67 of Indictment 75 Cr. 515 and two years on Counts 56, 57, 66, 68, 75 and 76; Naslas to concurrent terms of two years imprisonment on Counts 51, 62, 63, 65, 66 and 76 with all but six months suspended, to be followed by three years probation; Katritsis to concurrent terms of two years imprisonment on Counts 51, 56, 57, 58, 59, 65 and 66 with all but four months suspended, to be followed by three years probation.

Judge Pollack also sentenced Naslas to concurrent terms of one year imprisonment on Counts 1, 3 and 4 of Information 75 Cr. 1176 with all but six months suspended, to be followed by three years probation. These sentences were concurrent to those imposed on Indictment 75 Cr. 515.

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* Counts 1, 11-12, 17, 19-21 and 69 of Indictment 75 Cr. 515, in which Hanlon, Naslas and Katritsis were variously charged, were severed prior to trial.

Statement of Facts

The Government's Case

A. Introduction

The evidence established that James D. Hanlon, Tidal Marine International Corporation's ("Tidal Marine") attorney for admiralty and certain other matters, Costas Naslas, vice president of Tidal Marine and head of its New York office and Paul Katritsis, an employee of Tidal Marine and nephew of Harry Amanatides, the president of Tidal Marine, participated in a scheme to defraud lending institutions of over $30,000,000 in bank loans extended to Tidal Marine and its affiliates and subsidiaries. More specifically, the proof disclosed that Hanlon, Naslas and Katritsis made false and fraudulent statements for the purpose of inducing banks to loan millions of dollars and that Naslas participated in bribing officers of the Ship Loan Department of the National Bank of North America ("NBNA"), in exchange for obtaining some of these bank loans.

Tidal Marine was a public company that owned and operated ocean-going vessels. Its income was derived from chartering its ships for the purpose of carrying oil or dry cargoes. Between 1970 and 1972, Tidal Marine embarked upon a major course of expansion involving the rapid purchase of a great many ships. Throughout this period, Tidal Marine relied heavily upon bank loans for the funds required to make these acquisitions. The principal lenders were NBNA and, to a lesser extent, the Bank of America, London ("BOA"). The main collateral securing these loans was the assignment to the bank of the revenues of the charter on the ship that was the subject of each individual loan. It was to the income generated by the charters that the bank looked for repayment of the loans. Consequently, the existence and terms

of the charters were of crucial significance to the banks in deciding whether to make ship loans.

Hanlon, Naslas, and Katritsis repeatedly made fraudulent representations concerning charters that were either nonexistent or had significantly less advantageous terms than those represented. They also misrepresented the purchase price of ships that were the subject of the loans and, in some cases, the identity of the borrower. This last type of misrepresentation became particularly significant in the latter part of 1971 when NBNA decided not to loan any more money to Tidal Marine, with the consequence that the defendants participated in obtaining a series of loans in which it was falsely represented to NBNA that the borrowers were companies controlled by an individual named Mark Scufalos, president of Union Commercial Steamship Company ("Union Commercial"), while the borrowers were actually companies owned by Tidal Marine and its subsidiaries. In connection with certain of these loans, Naslas participated in a scheme to make payoffs totalling $140,000 to two NBNA loan officers, of which at least $90,000 was actually paid.*

Tidal Marine experienced increasingly serious financial problems during the latter part of 1971 and 1972, and ultimately collapsed in the summer of 1972.

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* GX 900A, which summarizes the loans most relevant to the charges and the charters purportedly securing them, has been reproduced in the Government's Appendix, *infra*, for the convenience of the Court.

References to Government exhibits in evidence are abbreviated herein as "GX".

B. The Defendants

1. James D. Hanlon

James D. Hanlon, a former partner in a New York law firm who specialized in admiralty law and a close personal friend of Harry Amanatides, devoted nearly 90% of his time to Tidal Marine's affairs during 1970-1972. (A. 614-615, 695-696, 746-748).* His work included representing Tidal Marine and its subsidiaries in connection with various ship acquisitions and numerous loan transactions. He also formed many Liberian corporations used by Tidal Marine to take title to its ships** and for other purposes.*** Between 1970 and 1972 Hanlon billed approximately $80,000 for legal work performed on behalf of Tidal Marine,**** and received an additional $20,000 as a retainer. (A. 616-619, 569-589, 748; GXS 260, 336A, 336B, 336C, 900C).***** In addition, he received a surreptitious $325,000 for his work in connection with the purchase and financing of the Trechon.****** Finally, Hanlon negotiated $7,500 in travelers checks purchased by Harry Amanatides, the president of Tidal Marine, on June 30, 1972.******* (A. 1096-1097; GX 377).

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* The trial transcript has been reproduced in appellants' Appendix and references thereto are abbreviated herein as "A."

** Each ship in the Tidal Marine fleet was owned by a separate corporate subsidiary of Tidal Marine.

*** The evidence established that at least some of these purposes were fraudulent. See *e.g.* pages 12-13, 25, *infra*.

**** The evidence strongly suggested that Hanlon's bills did not fully reflect the amount of work he performed for Tidal Marine. (A. 625-626).

***** GX 900C, which is a summary of Hanlon's billing records, has been reproduced in the Government's Appendix, *infra*, for the convenience of the Court.

****** See pages, 9-11, *infra*, for a discussion of the Trechon transaction.

******* Although proven to have been purchased by Amanatides in England, the checks bore only Hanlon's signature as both purchaser and endorser. There was no explanation for this payment offered at trial, at which Hanlon took the stand.

2. Costas Naslas

Costas Naslas was vice president of Tidal Marine and in charge of its New York office, where its corporate headquarters were located. He was one of the founders of Tidal Marine in the late 1960's and remained with it through June 1972. His work consisted principally of operating Tidal Marine's fleet of ships. (A. 557-558, 796-802). Naslas also participated in many of Tidal Marine's loan transactions and dealt frequently with NBNA in connection with loan requests, loan repayments and other financial matters. (A. 916-919, 923-928, 933, 953-957; GXS 960, 47D). During his tenure at Tidal Marine, Naslas was the owner of 25,000 Tidal Marine shares, which he sold in early 1972 for a little under $500,000. (GXS 450, 451).*

3. Paul Katritsis

Paul Katritsis was Harry Amanatides' nephew and, beginning in late 1971, an employee of Tidal Marine. He was Amanatides' confidant and handled personal matters for him. Katritsis also served as Amanatides' business assistant and as his spokesman when Amanatides was out of town, which was most of the time. His office was located across the hall from Amanatides'. (A. 895-901, 559-561, 966-967, 568). In addition, Katritsis attended the closings of numerous Tidal Marine loan transactions and made numerous representations in connection with these loans in his capacity as officer of numerous Tidal Marine ship owning corporations. Furthermore, Katritsis was the signatory on numerous fraudulent charters submitted to NBNA as security for loans to Tidal Marine and its subsidiaries. (A. 386, 439, 467, 810, 559-563; GXS 26-31, 43, 40, 50).

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* Naslas testified that he originally purchased those shares for $1,700 when he joined Tidal Marine. (A. 1191-1192).

C. The Trechon Loan—Counts 18 and 22 (Hanlon)

The earliest transaction among the charges tried was a $4,000,000 loan obtained from BOA to finance the purchase of the Trechon from a Tidal Marine subsidiary named Deneb Navigation Corporation (Deneb).*

During the latter part of 1970, Salvador Juan Huerta, a South American ship operator informed John Sheneman, Hanlon's law partner, that a ship by the name of the Petrolasa, later renamed the Trechon, was available for purchase in Venezuela. Sheneman made a series of offers for the purchase of the ship in the name of West Shore Tankers Ltd., a privately held company of which he was the principal. His final offer of $3,500,000 was accepted by the seller, and a memorandum of agreement dated October 21, 1970 was executed. The purchase price was later reduced to $3,385,000 because of the need to make repairs. Hanlon was a partner of Sheneman's in this deal and Sheneman discussed with him the possibility of finding a buyer for the vessel for a resale. Hanlon stated that he thought Tidal Marine might buy it. Hanlon went to London and obtained Tidal Marine's agreement to purchase the ship for $750,000 in excess of the amount for which it was being purchased from its original sellers. Hanlon and Sheneman agreed that they each would receive $325,000 and that Huerta would receive $100,000 of the $750,000 which Tidal Marine was willing to pay in excess of the purchase price. In October 1970 Hanlon arranged for the making of a $350,000 deposit on the purchase price of the ship. On December 2, 1970, Sheneman wrote to the sellers stating that Deneb, a Tidal Marine subsidiary, would take title to the vessel instead of West Shore

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* GX 900F, which summarizes the documentary evidence introduced by the Government in connection with the Trechon transaction, has been reproduced in the Government's Appendix, *infra*, for the convenience of the Court.

Tankers, Ltd. (A. 748-753, 700-704; GXS 700F, 287, 288, 291).

The purchase of the Trechon was financed by Tidal Marine at BOA, where Tidal Marine had earlier obtained a $12,400,000 line of credit to finance the purchase of four vessels subject to the condition that a loan for the purchase of any vessel not exceed the lower of 75% of the contracted purchase price or 60% of market value. On November 20, 1970, Amanatides and Livas requested a $4,000,000 loan to finance the purchase of the Trechon and falsely represented the purchase price as being $5,500,000. On December 1, 1970 BOA approved a $4,000,000 loan as representing 72.7% of the claimed $5,500.000 purchase price. (A. 192-196; GXS 900F, 280, 281, 284, 285).

Hanlon was present at the closing of the loan, which occurred in New York on December 9, 1970, and represented Tidal Marine in connection with this loan transaction. He was in communication with the New York and London attorneys representing BOA regarding the loan. On January 4, 1971, BOA's London solicitors sent Hanlon a copy of the line of credit loan agreement which, in accordance with the line of credit, specifically restricted loan amounts to 75% of the purchase price. Hanlon billed Tidal Marine $2,170 in connection with his work on the Trechon loan and $350 for his incorporation of Deneb in October 1970. (A. 794-796, 549-553; GXS 900F, 900B, 280, 281, 283A, 284, 283B, 285, 293, 299A).

The proceeds of the loan were distributed, pursuant to Amanatides' instructions, as follows: $3,035,000 to the sellers,* $750,000 to Kowloon Tankship Company (Kowloon), a Liberian corporation formed by Hanlon

* This was the amount of the reduced purchase price less the $350,000 deposit that Hanlon had arranged.

and privately held by him, and $215,000 to Victory Development Corporation, a Liberian corporation formed by Hanlon in December 1969.* Hanlon deposited the $750,000 in the Kowloon account at Irving Trust Company in London and ultimately distributed $325,000 to Sheneman and $100,000 to Huerta, while retaining $325,000. In addition, Hanlon received a $16,925 kickback from the brokerage commission on the Trechon, representing 5% of the purchase price. (A. 753-755, 702-703; GXS 900F, 900B, 285, 287, 415, 294A, 294B, 294C, 294D, 294E, 294G, 294H, 294O, 294P, 336A, 336B, 340, 349).

D. Loans at NBNA: The Procedure in Approving Shipping Loans

Except for the Trechon loan at BOA, all charges tried related to loans by Tidal Marine at NBNA in New York. During 1971-1972, the officers of the NBNA Ship Loan Department were, in order of authority, Gregory Spartalis, Joseph Metzger and John Shevlin. Bank regulations prescribed that loans in excess of an officer's authority** had to be approved by the Ship Department Loan Committee ("Loan Committee"), which consisted of the officers of the Ship Loan Department and several other lending officers, including a senior vice president when the proposed loan would bring the amount outstanding to the borrower over $2,000,000. A Ship Department officer recommending a loan was required to submit a loan fact sheet and loan offering sheet to the Loan Committee describing the proposed transaction. Prior to submitting a proposed loan to the Loan Committee, it was the practice of the officers of the Ship

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* Hanlon billed Tidal Marine for its formation on September 8, 1970. (GX 336A). Hanlon admitted at trial that this corporation had been taken over by Amanatides. (A. 1229).

** This would include all ship purchase loans.

Loan Department to discuss the transaction among themselves and only recommend it to the Loan Committee if it met with their unanimous approval. (A. 261-264, 915-916, 927).

In evaluating a proposed loan, the Loan Committee considered several factors; the qualifications of the borrower to operate the vessel, the value of the vessel, and the charter on the vessel. The length of the charter was a particularly important consideration because the bank relied upon the stream of income generated by the charter (known as charterhire) to repay the loan. NBNA had a policy of requiring that the principal and interest on ship loans not exceed the income anticipated from the charter and that the term of the loan not differ significantly from the period for which the vessel had fixed charter commitments at the time of the loan's inception. (A. 264-265).

After the Loan Committee approved a loan proposal, the bank's attorney would take the necessary steps to close the loan. (A. 246).

E. The ION Loans—Count 10 (Hanlon)

In January and February, 1971, NBNA closed loans on four ships, the Harilion, Kyrilion, Ilion and Marilion, ("the ION ships"), for a total amount of $2,200,000. The purpose of these loans, as represented to the bank, was to finance the purchase of these ships by Livas and another individual. It was also represented to the bank that the ships had been purchased for a total of $2,700,000 and that the ships were on charter, respectively, to Mitsui Lines, Port Lines/Blue Funnel, Unimar Seetransport GMBH and Japan Lines. The charters were to serve as security for the loans. Hanlon represented the borrowers and conducted negotiations in connection with each of these loans, billing Tidal Marine a total of $10,800

($2,700 on each loan) for his services. (A. 266-277, 597-600, 551-553, 792, 917-919; GXS 271-278, 393, 396, 399).

Both the representations as to the purchase price of the ships and their charters were false. The ships had been purchased from Scindia Steam Navigation Co., Ltd., of Bombay, for less than $2,100,000, and the Japan Lines, Mitsui Lines, and Port Lines/Blue Funnel charters were fictitious. It was also suggested by the evidence that the Unimar Seetransport GMBH charter was similarly fraudulent. Interestingly, on December 16, 1970, Hanlon formed a Liberian corporation by the name of Scindia Steam Navigation Co., Ltd. on behalf of Tidal Marine. Hanlon also formed Liberian corporations in the names of Unimar Seetransport GMBH Ltd., Mitsui—O.S.K. Lines KK of Tokyo Limited and Port Line-Blue Funnel Line of London Limited on behalf of Amanatides and Livas, the first on October 1, 1970,* and the last two on August 6, 1971. The names of these corporations closely resembled the names of well known corporations to which these vessels were purportedly chartered. (A. 572-574, 849-851, 645-653, 408-409; GXS 418A, 419-421, 415A, 416, 417, 414, 347, 354, 348, 350, 900C).

F. The Tama Debacle

On April 26, 1971, NBNA loaned $4,000,000 to Tidal Marine for the purported purpose of enabling it to purchase the Ninive, renamed the Tama, for $6,000,000.** It

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* Hanlon had previously represented Tidal Marine in connection with the financing of the vessel Triena, which was represented as being on charter to Unimar Seetransport GMBH. This loan closed on September 18, 1970. (A. 1431-1434; GXS 418, 417A).

** This purchase price did not reflect market value. The Tama had been purchased for $3,605,000 by a Liberian shell corporation controlled by Livas, which in turn immediately sold the vessel to Tidal Marine for $5,000,000. (A. 411-414, 825-827; GX 264).

was also represented to the bank that the Tama was on a five year charter. Both Hanlon and Naslas attended the closing. Immediately after the closing, the bank's attorney discovered that there was no charter on the Tama. This was immediately communicated to Shevlin, the Ship Department officer handling the loan, and to Hanlon and Naslas. Hanlon represented Tidal Marine in an unsuccessful effort to find a ship to replace the Tama as security for the loan. Finally, under pressure from the Ship Department loan officers, Tidal Marine repaid the loan prematurely from the proceeds of another Tidal Marine loan that closed in September, 1971. (A. 410-417, 923-926; GXS 264, 413, 412).*

G. The Six Dry Cargo Loan—Count 36 (Hanlon)

By August, 1971, NBNA had loans outstanding in an amount approaching $10,000,000 to Tidal Marine and its subsidiaries.** In August, 1971. at a meeting attended by Spartalis, Shevlin and Metzger, the Loan Committee decided not to make any additional loans to Tidal Marine until the company had substantially reduced its outstanding obligations. This decision was communicated to Naslas and Amanatides. (A. 267-269, 926-927).

It was at about this time that Tidal Marine began to use an individual named Mark Scufalos as a front to obtain additional loans from NBNA for Tidal Marine. (A. 269).

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* Spartalis, Shevlin and Metzger did not report the non-existence of the Tama charter to the Loan Committee, which had approved the loan. (A. 926).

No charges were filed against any of the defendants on trial in connection with this loan.

** Tidal Marine began to obtain ship loans from NBNA in 1969. (A. 916).

Scufalos was president of Union Commercial, a company whose business was to operate vessels on behalf of various owners. In March, 1971, Scufalos, acting on behalf of individual ship owning corporations, agreed to sell a fleet of thirteen vessels for approximately $15,000,000 to Tidal Marine, which was to pay 43% of the purchase price in cash upon the delivery of each vessel and the remainder in both cash and Tidal Marine stock at intervals during the following year. The fair market value of these vessels, however, was only about $5,500,000 at the time of the sale, because the shipping market was depressed and the vessels were old. Tidal Marine was represented by Hanlon in connection with this purchase. Hanlon billed Tidal Marine nearly $8,000 for legal services relating to this thirteen ship acquisition. His fee included charges for incorporating the Tidal Marine subsidiaries which took title to the vessels (A. 300-307, 564-578; GXS 120, 414A, 900C, 355-357, 341, 343-346).

A short time after the sale of the thirteen vessels, Scufalos was asked by Harry Amanatides, president of Tidal Marine, to help with the arrangements for financing the purchase of these ships. In response to this request, Scufalos assisted Tidal Marine in financing three of the vessels at Williams & Glyn's Bank in London.* The proceeds of this financing were used to pay the sellers of the ship sums owed under the agreed purchase price. Two ships were financed by the General Electric Pension Trust and two by Farber Commercial Corporation. The General Electric and Farber loans closed, respectively, in September and August, 1971. Hanlon represented Tidal Marine in connection with both of these loans.* The borrowers were represented to the lenders as

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* Two of those, the May and the June, would shortly be refinanced at NBNA. See page 18, *infra*.

** Naslas, as well as Hanlon, was present at the closing of the two Farber loans. (A. 369-371).

being subsidiaries of Tidal Marine. (A. 308-310, 368-371; GXS 800, 801, 266A, 266B, 266C, 266D, 900C).

The six other ships from the thirteen ship purchase (referred to as the six dry cargo vessels) were financed at NBNA in August, 1971. In July, 1971, Amanatides asked Scufalos to come to New York to assist him in arranging this financing. Scufalos came to New York and was told by Amanatides that it was necessary for Scufalos to appear as the borrower on the loan instead of Tidal Marine because Tidal Marine had reached its lending limit at NBNA. Amanatides instructed Scufalos to approach Metzger and to request a loan in the amount of $3.3 million for the purported purpose of enabling Scufalos to buy out his partners' interests in the six vessels. Amanatides told Scufalos to tell Metzger, if he asked about the employment for the vessels, that the ships were on time charter to Transoceanic Shipping Company, ("Transoceanic"), a concern in which Ion Livas, Amanatides' partner in the operation of Tidal Marine and chairman of its board of directors in 1972, was a principal. Both of these representations were false. The actual purpose of the loan was to enable Tidal Marine to finance its purchase of the vessels—none of which was operating on charters to Transoceanic.* When Scufalos approached Metzger for the loan as instructed,** Metzger told him there would be no problem. (A. 173-176, 165).

A loan in the amount of $3,300,000 was approved by the Loan Committee on July 27, 1971, and closed on August 11, 1971. The Committee approved the loan on the basis of the representations that its purpose was to

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* Harlon billed Tidal Marine for the formation of Transoceanic. (GX 900C).

** Scufalos pleaded guilty to making false statements to NBNA in connection with this loan.

enable Scufalos to buy out his partners' interests in the six vessels and that the earnings from the Transoceanic charters, which served as security for the loan, were sufficient to repay the loan. Fabricated Transoceanic charters, signed by Paul Katritsis for the borrowing corporations, (all Tidal Marine subsidiaries formed by Hanlon), were submitted to the bank in connection with the closing. Hanlon represented the borrowers in this loan transaction, attended the loan closing and signed the loan agreement * but was neither retained nor paid by Scufalos. He billed Tidal Marine $9,000 for his services. Neither senior officers of the bank nor the bank's attorney with whom Hanlon dealt were aware that Tidal Marine had any interest in the ships which were being financed. (A. 313-314, 654-658, 132-134; GXS 25-31, 900C) No mention of Tidal Marine was made in the closing documents, in marked contrast to the closing documents executed in connection with the earlier Farber commercial loans and the subsequent General Electric loans.

In connection with the closing, Hanlon signed an opinion letter dated September 8, 1971, as counsel for the borrowers in which he made a number of representations concerning the borrowing corporations and other matters. No mention was made of Tidal Marine in the letter either as the principal of those corporations or otherwise. Significantly, the opinion letters furnished by Hanlon in connection with the Farber Commercial and General Electric loans, which were correctly represented to the lenders as being Tidal Marine loans, referred to Tidal Marine as the principal in the loan transactions. (A. 383-384; GXS 31, 800, 801, 262A).**

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* Katritris also signed documents at the loan closing as an officer of the borrowing corporations. (GXS 25-31).

** The General Electric opinion letters were dated September 23 and September 27, 1971; the Farber opinion letter was dated August 2, 1971.

H. The May and June Loan

On November 3, 1971, NBNA loaned $1,700,000 for the purpose, as represented to the bank, of enabling Scufalos and Livas to purchase the vessels May and June.* Both ships, however, were among the thirteen sold to Tidal Marine in March, 1971.** Scufalos himself had no contact with any bank employee concerning the loan and did not even know that he had been put forward as the borrower. At the closing, the borrowing corporations were again represented by Hanlon, who acted as both their legal counsel and attorney-in-fact, and, as such, signed many documents on their behalf. The charters submitted to the bank as security for the loan were forgeries. (A. 316-321, 271-272, 929, 836-837; GXS 33-35, 332D, 332E, 332F, 332G, 390, 391, 389).

I. The Payoffs—Counts 1, 3, 4 and 5 of the Information (Naslas)

In January, 1971, Naslas took Shevlin out to lunch and told Shevlin that Amanatides and he would like to buy him a stereo set in appreciation for all the things Shevlin had done for Tidal Marine. Shevlin declined. Two weeks later, Naslas took Shevlin out to lunch again and told him that Amanatides was disappointed that he did not want a stereo set. Shevlin said that he was thinking of buying a set of golf clubs but did not want anything. About two months later Naslas called Shevlin and asked him what kind of golf clubs he wanted. Shevlin replied that First Flight was the preferable model but that it was not necessary to give him anything. In May or June, 1971, Naslas informed Shevlin that the clubs

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* No charges were brought against any of the defendants on trial in connection with this transaction.

** They were also among the three ships earlier financed by Tidal Marine at Williams & Glyn's Bank in London.

had arrived. Shevlin told him that he did not want the clubs—especially in view of the fact that it had been discovered that there was no charter on the Tama. Around Christmas, 1971, Naslas called Shevlin again and asked him to pick up the clubs and Shevlin told him to send the golf clubs to his home. (A. 919-922).

In November, 1971, Spartalis called Shevlin into his office and told him that Amanatides would be coming to discuss proposed loans to Panayotopulos and Scufalos and that there would be a financial arrangement whereby Shevlin, Metzger and Spartalis would receive money in connection with these loans. Shortly thereafter, Amanatides arrived, and it was agreed that Tidal Marine would pay Spartalis, Metzger and Shevlin $70,000 each for their help in obtaining loans on four vessels. Those vessels were the Tropis and Tekton, for which Scufalos was to be presented as the borrower, and the Aris and Tachys, for which Michael Panayotopulos was to be presented as the borrower. All four vessels belonged to Tidal Marine. Amanatides promised to submit the documentation on these loans in the near future. After Amanatides left, Metzger and Shevlin discussed Amanatides' proposal in Spartalis' office. Shortly thereafter, Amanatides and Naslas began to submit information to the bank in connection with these loans. (A. 930-933).

The first payment of $10,000 each to Metzger and Shevlin occurred on Christmas Eve, 1971,* and was

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* Shevlin pleaded guilty to accepting a $10,000 bribe from Amanatides on December 24, 1971. While Shevlin did not see Spartalis receive any money from any officer of Tidal Marine, documentary evidence indicated that during 1971 and 1972 Spartalis deposited checks totalling approximately $1,000,000 in a Swiss bank account which was under his control. Checks drawn on private bank accounts of Liberian shell corporations controlled by A. Ion Livas, and formed by Hanlon, accounted for almost half this sum. (GXS 18 A, 181B, 181C, 182, 339A, 339B, 351).

made in cash by Amanatides at the bank at the time of the Tropis and Tekton loan closing. Afterwards, Shevlin suggested to Metzger that it might be better for them to rent a car to go home, but Metzger disagreed and they rode home on the train. (A. 934-936).

A second $10,000 payment was made to both Metzger and Shevlin in the first week of January, 1972, following the closing of the Aris loan. They went to Tidal Marine's offices, located near the bank, and each received white envelopes from Amanatides containing cash. On January 7, 1972, a check for $20,000 dated January 6, 1972, made out to cash and signed by Naslas, was negotiated at NBNA by Katritsis. The check purported on its face to have been drawn for the purpose of supplying cash to the master of the Aquario.* The Aquario, however, was sailing in the Caribbean at the time, and indeed, the day before, on January 5, 1972, Naslas ordered the wire transfer of $15,000 from BOA, New York to BOA, Willemstad, Curacao for the purpose of providing funds to the master of the Aquario. (A. 936-937, 1075-1077, 739-740, 1073; GXS 53A, 3B, 10B, 11A, 11B, 11C, 402).

The third payoff was made in late January, 1972. Spartalis asked Shevlin whether Metzger and he had received any further payments. When Shevlin replied negatively, Spartalis said that he would have to do something about that. Shortly thereafter, Shevlin received a call from Naslas who said: "I know we owe you and Joe [Metzger] another payment of $20,000, but the only place I have the money is in one of our accounts. Is it possible for you to get it out of there?" Shevlin checked, discovered that it would be possible to get $20,000 in cash on the pretext that it was needed to

* "Cash to master" is a payment to the captain of a ship to provide for crew wages, provisions and other needs. (A. 804).

meet the Aquario's payroll and so informed Naslas, who said that he would send someone over to pick up the funds. Naslas then sent Panayotis Pyrpyris, a Tidal Marine employee, to the bank with a check for $20,000, dated January 28, 1972, made out to cash and signed by Naslas. This check, like the January 6th check, purported on its face to be drawn for the purpose of providing cash to the master of the Aquario. This vessel, however, was still in the Caribbean. In fact, Naslas had returned from a meeting in Caracas concerning the operation of the Aquario only a few days earlier and played a major role in supervising its operation. Pyrpyris endorsed the check, brought it to Shevlin, who initialed it, and then received the $20,000 in cash, which he gave to Naslas.* (A. 937-941, 1070-1074, 1077-1078, 796-800, 738-739; GXS 17G, 11E, 11D, 1C, 405).

At about 5:00 P.M. that same day, Shevlin and Metzger went to Naslas' office and received white envelopes each containing $10,000 from him. Shevlin also received a second envelope from Naslas containing photographs taken by Stephanos Dallas at Tidal Marine's 1971 Christmas party pursuant to Naslas' instructions. (A. 941-944, 1082-1085; GXS 168-180).

Shevlin and Metzger received their fourth payment in the latter part of February, following the Tachys closing. Naslas handed each of them an envelope containing $10,000 in the lobby of the building where Tidal Marine's offices were located. Shevlin's recollection of this payment was hazy. (A. 945).

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* On February 9, 1972, Naslas ordered a wire transfer of $10,000 from BOA, New York to BOA, Willemstad, Curacao to provide cash for the master of the Aquario. (GXS 3A, 10A, 403). GX 900B, which summarizes the documentary evidence supporting the Government's contention that the January 6 and January 28 checks signed by Naslas were used to supply funds for the payoffs rather than cash to the master of the Aquario as they purport, has been reproduced in the Government's Appendix, *infra*, for the convenience of the Court.

The fifth and final payment * was made in March, 1972. At that time Metzger told Shevlin that Amanatides wanted to see them. The bank officers then met with Amanatides in the lobby of a nearby building, where Amanatides handed each of them an envelope that, he said, contained $5,000 in $500 bills and travelers checks. Metzger subsequently told Shevlin that he had destroyed the cash and travelers checks he had received from Amanatides on this occasion.** (A. 945-947, 1093-1096; GXS 187, 165, 167).

There were discussions concerning the receipt of additional payoffs during the spring of 1972. Spartalis informed Shevlin and Metzger that Naslas was buying a ship, the Anastasis, on his own and that Naslas wanted NBNA to finance it. He said that there was an arrangement pursuant to which Metzger and Shevlin would receive $10,000 each and Spartalis $30,000 in connection with the financing of the Anastasis. Although Shevlin did not receive any money in connection with the financing of the Anastasis, as a result of the promise of payoffs the Ship Loan Department loaned an amount $50,000 in excess of what the value of the collateral warranted. (A. 949-951, 664-667; GXS 333, 964).

Shortly after the discussion concerning the Anastasis, Spartalis informed Shevlin and Metzger that Amanatides had an additional loan proposal to make concern-

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* Naslas was convicted on Counts 1, 3 and 4 of the information which charged him, respectively, with conspiracy and participation in the second and third payoffs. He was acquitted on Count 5, which charged him in connection with the fourth payment.

** Shevlin retained his travelers checks and later turned them over to the Government. They were shown at trial to have been purchased by Amanatides in London. (A. 946-947, 1094-1095; GX 167).

ing the Tagma * and that if the three bank officers financed the Anastasis and Tagma together, they would receive $70,000 each. Although a loan was made for the purchase of the Tagma, Shevlin did not receive any money in connection with it. (A. 813).

In February, 1972, Metzger installed in his home a safe that cost $826.80. He paid for all but $100 of this amount in cash. Metzger told Shevlin that he purchased this safe to keep the money he had received from Tidal Marine. (A. 916-917). Shevlin subsequently purchased the same type of safe for his Tidal Marine payoffs. (A. 951-953, 1064-1067; GXS 185, 188, 225, 163, 164).

During late 1971 and early 1972 Tidal Marine experienced a progressively critical shortage of working capital. As a result, Naslas and Amanatides requested and received on behalf of Tidal Marine a number of short term loans. In April, 1972, Livas, Amanatides and Naslas took Spartalis, Shevlin and Metzger to lunch at Delmonico's. Livas thanked the bankers for their assistance and told them that Tidal Marine might require additional help during the year. At a second luncheon meeting a month later attended by Amanatides, Naslas and the three bank officers, Amanatides stated that Tidal Marine was in trouble and requested a moratorium on monthly loan repayments. Spartalis then pointed out that Metzger and Shevlin had not received the full amount of payoffs that had been promised. Spartalis, Metzger and Shevlin granted the requested moratorium without obtaining the approval of or even consulting the Loan Committee. (A. 280-281, 956-958).

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* See page 35, *infra*, for an account of the Tagma transaction.

J. The Tropis and Tekton Loan—Counts 51 and 56-59 (Hanlon, Naslas and Katritsis)

The Tropis and Tekton were among four ships purchased * by Tidal Marine from a ship owner named Karageorgis in February, 1971. The memorandum of agreement with respect to the purchase specifically provided that the two vessels were being transferred subject to 3 year charters to British Petroleum ("BP"), which were to commence at the end of 1971. Hanlon billed Tidal Marine $5,750 for legal services he performed in connection with the purchase of the four ships. (A. 222-232, 245; GXS 367-372, 900C.)

Tidal Marine originally obtained financing for the Tropis and Tekton at BOA in July and May, 1971, respectively. The total amount loaned was $3,750,000, and the loans were secured in part by assignments of the three year BP charters on which the vessels were fixed at the time of their acquisition. Hanlon represented Tidal Marine in connection with the Tekton loan and was present at the closing of the loan in New York. Naslas was also present at the Tekton loan closing and signed as a witness to the execution of an assignment of the BP charter, which stated its term as being three years, in addition to signing other closing documents as secretary of the Tidal Marine subsidiary owning the ship. He also signed closing documents in connection with the Tropis BOA loan, once again as secretary of the ship owning corporation. Although the Tropis and Tekton had been purchased for $1,500,000 and $2,400,000 respectively, the purchase prices as represented to BOA in connection with these loans were, respectively, $2,400,000 and $3,500,000. (A. 95, 196-202, 541-544, 1078-1079; GXS 268, 270, 266A, 266B, 266C, 266D, 266H, 367). Correspondence

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* They were known as the Ketty and Michael A. Karageorgis at the time of their purchase.

and telexes to and from Naslas established that he participated in the operation of the Tekton subsequent to its acquisition from Tidal Marine. (GXS 411, 410B.)

On December 24, 1971, just months after the BOA loans, NBNA loaned $5,500,000 for the purpose, as represented to the bank, of enabling Scufalos to purchase the Tropis and Tekton. These were the first two of the four loans made pursuant to the agreement to make payoffs to the bank officers of the Ship Loan Department. The loan was secured by what were represented to be five year BP charters on the two vessels. Both the representations as to the identity of the borrower and the security were false. The ships were not being purchased by Scufalos but were actually merely being refinanced by Tidal Marine, and they were not on five year BP charters but on the same three years BP charters with which they were purchased from Karageorgis and financed at BOA. Hanlon once again represented the borrowers in connection with this loan. Significantly, he formed on behalf of Tidal Marine both the corporations purportedly selling and those purportedly purchasing the vessels, which were, respectively, Alkaid and Antares Navigation Corporations and Aries and Pisces Navigation Corporations ("Aries and Pisces"). The bank's attorney in this transaction, Patrick Martin, testified that in response to Hanlon's suggestion that they transfer the stock from the corporations currently owning the vessels to Scufalos, he told Hanlon that since the ships were being purchased by Scufalos, as he had been lead to believe, he would prefer to have two new corporations formed to take title to the vessels. Scufalos, however, never applied for and had neither knowledge of this loan nor any financial interest in the Tropis and Tekton.* (A. 321, 462-

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* A guarantee was submitted to the bank in Scufalos' name. He had previously signed blank guarantees on NBNA forms at Amanatides' request and was unaware that they had been used for this purpose. (A. 321-322).

464, 520, 272-273, 933-936, 377-379, 578-519; GXS 39, 40, 265).

Hanlon, Naslas and Katritsis attended the loan closing. At the closing, Martin asked Hanlon to execute a pledge of the shares of the borrowing corporations. Hanlon refused to pledge the shares and left the room to consult with Amanatides. Ultimately, after a private conversation with Amanatides in Greek, Spartalis agreed to waive the stock pledge. As a condition of the closing, Hanlon submitted interest equalization tax letters on behalf of Aries and Pisces which stated that all the stock of the respective corporations, Aries and Pisces, had been owned for one year by Union Commercial Shipping Company.* Katritsis, the president of Aries and Pisces, signed both letters. However, the stock books of Aries and Pisces, which were retained in Hanlon's office, indicated that all the issued shares of the corporations were held by Galaxy Steamship Corporation, a subsidiary of Tidal Marine. Copies of the purported five year BP charters on the Tropis and Tekton were also submitted to the bank in connection with the closing. Both of these charters were forgeries. Katritsis signed assignments of charterhire on both vessels which purported to give the bank a security interest in the charters. As president of Aries and Pisces, Katritsis also executed additional closing documents. Naslas, as vice president of Aries, signed a power of attorney authorizing the registration of the Tropis with the Panamanian authorities, which the bank required prior to releasing a substantial portion of the proceeds of the loan. Naslas was also vice president of Pisces. Significantly, although this transaction had been presented to NBNA as a Scufalos ship purchase, Naslas sent a telex dated January 31, 1972, to Tidal Marine's

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* These letters were required to enable the bank to enjoy a benefit under the tax laws. (A. 470).

London office in which he referred to the transfer of the Tropis and Tekton to new corporations as being the result of a refinancing. (A. 466-482, 697-698, 281-282, 389-391, 839-845; GXS 39, 40, 961A, 961B, 40D, 40F, 40C, 40E, 40A, 40B, 40T, 265, 104, 103, 863).

K. The Aris Loan—Counts 62 and 63 (Naslas)

The third loan in connection with which the Ship Loan Department had been promised payoffs was closed on December 29, 1971. Its purported purpose was to finance the sale of the vessel Aris by a Tidal Marine subsidiary to a company owned by Michael Panayotopulos.* The amount loaned was $4,266,000. (A 275, 384-385, 417-418; GXS 5, 850).

As represented to and approved by the Loan Committee, the loan was predicated upon and to be secured by a five year charter with Wintershall A.G., Kassel ("Wintershall"). A purported copy of such a charter was submitted at the closing, which was attended by Naslas, Hanlon and Katritsis. As a condition of the closing, a memorandum of agreement providing for the sale of the ship and signed on behalf of the seller by Naslas ** was submitted to the bank. The agreement contained a warranty by the seller that the Aris had entered into a five year charter with Wintershall. In fact, the charter submitted to the bank was a forgery and the warranty was false. Wintershall had never entered into a five year charter on the Aris. Its charter commitment on the Aris was for three years, and on November 16, 1971, some six weeks prior to the Aris closing, Naslas had signed the

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* Tidal Marine, however, continued to operate the Aris even after the 'sale." (A. 386).

** Katritsis signed the agreement on behalf of the purchasing corporation. (A. 810; GX 5).

authentic three year charter with Wintershall as a witness to Amanatides' signing of it. This charter, of course, provided the bank with substantially less security than a five year charter—especially in a declining shipping market. (A. 276, 279-280, 385-389, 845-846; GXS 950, 5, 850).

L. The Aquario Loan—Counts 67 and 68 (Hanlon)

1. Its Purchase and its Financing at the First National Bank of Boston

During the spring or summer of 1971, Gerard Nout, an employee of Compania Shell de Venezuela ("Shell"), whose job it was to obtain ships to carry oil for Shell in the Caribbean, offered Salvador Huerta a charter for 33 months * if he would supply an appropriate vessel. Huerta located a vessel by the name of the Dodone which was available for purchase. Shell accepted the vessel and entered into a 33 month charter with Southeast Tankers Company, Ltd.** ("Southeast Tankers"), of which Huerta was then president. (A. 704-706, 732-734; GX 301).

Huerta called Sheneman and asked his assistance in finding funds to finance the purchase of the Dodone. Sheneman said that he could not get the money but would try to find somebody who could. Sheneman then discussed this matter with Hanlon and informed him of the terms of the charter. Hanlon responded that Tidal Marine or Amanatides might be interested in the deal.

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* The length of the charter as originally proposed was three years but it was reduced to 33 months prior to its execution. (A. 705, 756).

** Hanlon formed this Liberian corporation on June 7, 1971. (GX 342).

Subsequently, an arrangement was made between Sheneman, Hanlon, Huerta and the principals of Tidal Marine, including Amanatides, to purchase through Southeast Tankers a ship named the Thorhild, renamed the Aquario, to be placed on the Shell charter. An addendum was added to the charter providing for the substitution of the Aquario for the Dodone. Hanlon and Sheneman, acting through their privately held corporations, Kowloon Tankship and West Shore Tankers, each received a 20% interest in the Aquario, Huerta a 10% interest and Tidal Marine or its principals the remaining 50% interest. The purchase price of the Aquario was $795,000. Hanlon and Sheneman each contributed $57,500 toward the purchase, and Hanlon arranged for the making of a 10% down payment on the purchase price* and prepared corporate resolutions for Southeast Tankers authorizing the purchase of the Aquario. (A. 706-710, 733-737, 829, 755-758, 779-784; GXS 301, 900E, 294E, 317C, 294J, 302).

The purchase was financed by a $780,000 loan obtained by Southeast Tankers on July 16, 1971, from the First National Bank of Boston ("FNBB") in London. The loan was based upon the Aquario's alleged value of $1,300,000 and was secured by the 33 month charter with Shell. Hanlon represented Southeast Tankers in connection with the purchase and financing of the Aquario and billed $7,300 for his services. As attorney-in-fact for Southeast Tankers, Hanlon executed a first preferred mortgage on the Aquario in favor of FNBB which warranted that all the issued shares of Southeast Tankers were owned by Transoceanic. In fact, as the stock book

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* GX 900E, which summarizes a number of Government exhibits relating to Hanlon's participation in the Aquario transaction, has been reproduced in the Government's Appendix, *infra*, for the convenience of the Court.

of Southeast Tankers—which was in Hanlon's possession —indicated, 100 out of its 500 issued shares had been issued to Kowloon Tankship, Hanlon's shell corporation, and none had been issued to Transoceanic. Hanlon also drafted corporate minutes for Southeast Tankers in Tidal Marine's London office authorizing the FNBB loan and electing A. Ion Livas, Markella Delfos and Michael Blonsky as officers of Southeast Tankers.* Furthermore, on the same day as the loan closed, Hanlon registered two bills of sale for the Aquario with the Liberian Deputy Commissioner for Maritime Affairs in New York.** One bill of sale conveyed the vessel from its seller to Brent Shipping Company, Ltd. ("Brent"), for $795,500. The second bill of sale, signed by Paul Katritsis on behalf of Brent, purported to convey the Aquario from Brent to Southeast Tankers at a purchase price of $1,300,000. (A. 763-764, 281-282, 443-452, 827-830; GXS 900E, 302, 307, 308, 966, 327, 329A, 329B, 330A, 330B, 331A, 306, 325, 900A).

2. Operation of the Aquario

The Aquario began operating under its charter in the summer of 1971 but performed very poorly and was unable to meet its obligations under the charter agreement. As a result, Hanlon had several discussions and a number of communications with Nout of Shell and Huerta, who operated the ship for a time, concerning

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* Markella Delfos worked as a secretary in Tidal Marine's London office. Michael Blonsky worked in the same office. (A. 823-824).

** On the same day, Hanlon sent a telex to Huerta requesting him to forward the addendum to the charter providing for the substitution of the Aquario for the Dodone to London for FNBB. (GX 416).

its inadequate performance under the charter. Hanlon met concerning the Aquario with Huerta, Sheneman and Naslas on October 14, 1971 in Curacao, with Huerta, Sheneman, Amanatides and Livas also in October in London, and with Huerta, Sheneman, Nout and Naslas in Caracas in January 1972. Finally, Nout deducted money from the charterhire due under the charter because of the Aquario's poor performance. Hanlon wrote to Nout in late January claiming that Nout's deductions were inconsistent with the terms of the charter. (A. 713-716, 737-739, 759-761; GXS 5A, 300A, 405, 326, 406).

3. Refinancing of the Aquario at NBNA

On February 11, 1972, Southeast Tankers obtained a $1,500,000 loan, almost twice the amount of the FNBB loan, from NBNA for the purpose of refinancing the Aquario. Hanlon represented the borrower in connection with this loan transaction. Prior to the closing, the bank's attorney, Joseph Peter Flemming, asked Hanlon to inform him of the terms of the charter which was to serve as security for the loan. Hanlon supplied the requested information and physically submitted a copy of the purported charter to the bank. Hanlon also signed the loan agreement, which set forth the length of the charter. According to the information Hanlon provided, the charter he submitted and the loan agreement he signed, the Aquario was on a 42 month charter with Shell. Hanlon's representations, however, were false and the charter he submitted a forgery. The Aquario, of course, was on a 33 month charter with Shell. The forged 42 month charter submitted by Hanlon differed from the real one, among other respects, in that while the forged charter

referred to the vessel being chartered as the "Aquario," the authentic charter was entered into on the "Dodone," and the "Aquario" was substituted by Addendum No. 1 to the charter. Furthermore, the real charter had been signed by Huerta and the forgery was signed by Livas. Hanlon's misrepresentation had the effect of increasing the amount of money that NBNA was willing to loan.* (A. 423-427, 451-453, 734-737, 265, 278-280, 761-762, 829-832; GXS 42, 41A, 301, 318). Copies of the forged Aquario charter, Addendum No. 1 to the authentic charter and the assignment of charterhire in favor of FNBB, which stated the charter as being 33 months, were retained in a file in Hanlon's law offices.** Only Hanlon, Sheneman and secretaries had access to this file. (A. 764-769; GXS 318, 405D, 414).***

M. The Tachys Loan—Counts 65 and 66 (Hanlon, Naslas and Katritsis)

The Tachys was among the four ships purchased from Karageorgis in February, 1971.**** As in the case of the Tropis and Tekton, it was acquired with a three year BP charter already fixed. It was originally financed at BOA in April, 1971. The loan was for $3,250,000 and it

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* During late 1971 and early 1972 the shipping market was extremely depressed. This had the result of reducing the values of ships in the absence of attractive, long-term charters. (A. 258, 817).

** This file also contained, among other Aquario documents, the first preferred mortgage on the Aquario with FNBB containing the misrepresentation of the ownership of Southeast Tankers shares. (GX 325).

*** Sheneman only devoted about 5% of his time to Tidal Marine legal work and did not do any legal work in connection with the Aquario. (A. 767, 748, 754, 761-762).

**** The vessel was known as the Messiniaki Floga at the time of its purchase.

was predicated in part upon a misrepresentation that the purchase price of the Tachys was $6,000,000, when in fact it was $5,000,000. Hanlon billed Tidal Marine $1,350 for his legal services in connection with the loan. (A. 222-232, 245, 196-198; GXS 900C, 900A, 46, 9, 299E, 299F, 299G).

On February 4, 1972, NBNA loaned $4,500,000 to finance the sale of the Tachys by a Tidal Marine subsidiary to Michael Panayotopulos. The loan was secured by a purported five year BP charter. This charter, however, was a forgery. The Tachys was not on any charter at all, because the three year charter with which it had been purchased from Karageorgis and financed at BOA had been cancelled in May 1971. (A. 276-277, 374-376, 846, 848; GXS 43, 253A, 9, 37, 44).

Hanlon, Naslas, Patrick Martin, who represented NBNA, and Joseph Peter Flemming, who represented Panayotopulos, were present at the loan closing. Since a Tidal Marine subsidiary was going to continue to operate the Tachys after its sale, the bank insisted upon receiving a guarantee by Tidal Marine that the five year charter securing the loan was in existence. At the closing Martin handed the guarantee to Hanlon, who represented Tidal Marine, and asked him to have it signed. Hanlon handed it to Naslas who read it, appeared somewhat startled and said that he would have to go out and check on it. Naslas returned to the room a few minutes later and signed the guarantee. Prior to the closing Hanlon, in response to a request by Flemming, submitted letters signed by Katritsis and himself which represented that the charter purportedly securing the loan was in existence. (A. 482-488, 418-423; GXS 252, 254-256, 3).*

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* Both of these letters referred to the date of the charter as November 20, 1971. The three year BP charter with which the Tachys was purchased from Karageorgis and financed at BOA, however, was dated November 20, 1970. (GXS 254, 255, 253A).

In addition, Katritsis was not only a signatory of the forged Tachys charter submitted to the bank but also caused the submission to the bank of a certificate attesting to its authenticity. George Axiotakis, a Tidal Marine employee, testified that in early 1972 Naslas made him an officer of the corporation purchasing the Tachys. When Axiotakis asked him whether he would get in trouble, Naslas said of course not. Shortly thereafter, Axiotakis executed several documents, including his resignation from the corporation. At a later date, Katritsis came into his office and asked him to sign a certificate attesting to the validity of the forged Tachys charter. When Axiotakis pointed out that he could not sign it because he had already resigned and the document was back dated, Katritsis said that it "was okay" and that the lawyer already knew about it. Axiotakis then said, "[I]t is what it says it is, isn't it?" Katritsis replied, "Come on George, stop fooling around and sign it." Axiotakis did so and returned it to Katritsis. (A. 559-563; GX 3).

About two weeks after the closing, Shevlin informed Martin that the bank had not yet received any of the charterhire assigned to it as security for the loan. Martin called Naslas and asked him whether the vessel had been tendered under the charter. Naslas reported back that the vessel had been tendered and accepted by the charterer on February 11, 1972. Martin then required why, if this were so, the bank had not received any charterhire. Naslas said he would check and subsequently responded that the charterhire had been inadvertently paid into the Galaxy account at BOA. However, the BOA Galaxy account records revealed that this statement was false. In March, 1972, NBNA received a letter from the purported charterer stating that the Tachys was not on charter to it. Shevlin called Naslas and advised him of the contents of this letter.* (A. 494-498, 953-954; GXS 11, 43, 916A, 961B).

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* The NBNA Ship Loan Committee, which approved the loan, was never informed of this development. (A. 953-954).

N. The Tagma Loan—Counts 75 and 76 (Hanlon and Naslas)

On April 28, 1972, the Loan Committee approved a $3,200,000 loan for the purported purpose of enabling Scufalos to purchase the Santa Isabella, which was renamed the Tagma.* Once again, Scufalos agreed to serve as a front for Tidal Marine, the real purchaser of the ship, at the urging of Amanatides in order to generate funds with which Tidal Marine would pay Union Commercial money it was owed. Scufalos, however, never had any interest in the Tagma or the borrowing corporation and had no contact with NBNA prior to the closing of the loan.** Hanlon once again represented the borrower in connection with this loan and was present at the New York closing, which occurred on June 15, 1972. Naslas was also present. Melvin Tublin, the attorney who represented NBNA and believed the transaction to be a Scufalos venture, had repeated contacts with Hanlon concerning the loan. On June 3, 1972, Hanlon wrote a letter to Tublin falsely representing that Scufalos owned all the stock in the borrowing corporation. Some two weeks later, however, Hanlon wrote to Naslas, the vice president of Tidal Marine, enclosing copies of the documents executed in connection with the loan closing. Naslas signed an interest equalization tax letter letter as a condition of the closing which similarly represented that Scufalos was the sole shareholder of the borrowing corporation. The evidence revealed, however, that Naslas had been involved in making arrangements for the purchase of the Tagma in his capacity of vice president of

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* Spartalis, Metzger and Shevlin were promised additional payoffs in connection with this loan. *See* pages 22-23, *supra*.

** Scufalos was present at the closing of the loan and executed a certificate stating that he was the sole shareholder of the borrowing corporation as well as a personal guarantee. He pleaded guilty to making a false statement to NBNA with respect to the certificate. (A. 322-325).

Tidal Marine. He was also an authorized signatory of the borrower's account of NBNA.* (A. 322-325, 658-664, 274-275; GXS 20, 45, 22, 408, 410A, 407, 1107, 102, 410).

O. The Inflated Financial Statement

Joyce Walker, Amanatides' secretary, testified that although Katritsis was not a typist, Amanatides on occasion asked Katritsis to type business documents and letters which he did not want anyone to see. Both Amanatides and Katritsis rejected Walker's offers to type these documents instead of Katritsis. She recalled that in March, 1972, there was a great rush in preparing Tidal Marine's financial statement because Amanatides needed it the following day in connection with an appointment he had with some bankers. The accountant from S.D. Leidesdorf & Co. stayed late to complete the statement. After he left, Walker typed the statement and gave it to Amanatides and Katritsis. While she was typing, Amanatides and Katritsis discussed the statement that the accountant had prepared. During the course of this conversation, Amanatides told Katritsis that "the earnings per share figure would never work, they would never get the loan with the figure that low." Walker left Amanatides and Katritsis alone in the office after she finished typing the statement. (A. 897-900).

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* There were difficulties once again in connection with the charters securing this loan. As approved by the Loan Committee, the loan was to be secured in part by a charter with Montecatini Edison. Prior to the closing it was discovered that the purported Montecatini Edison charter did not exist, and a charter with P. Wigham-Richardson was substituted. Unknown to the bank, however, this charter did not bind P. Wigham-Richardson. (A. 659-661, 691-692).

In addition, although the purchase price of the Tagma as represented to NBNA was $4,000,000, the actual price was $1,685,000. (GXS 45, 804).

The next morning Katritsis gave Walker a new typed version of the financial statement on top of the version she had typed the previous night, which contained pencilled changes in Amanatides' handwriting.* Nearly all the figures had been increased with the result that the earnings per share and net worth figures were inflated. (A. 900)

The Defense Case

The defense case consisted of the testimony of Hanlon, Naslas and Katritsis.**

A. Hanlon

From the time of his admission to the bar in 1958, Hanlon specialized in the practice of admiralty law. Hanlon testified that he met Amanatides in 1961 and became friendly with him shortly thereafter. He was retained as Tidal Marine's admiralty counsel upon its formation in 1968 and continued to serve in that capacity until it collapsed in the latter part of 1972. By the end of 1971, Hanlon had represented Tidal Marine in approximately 35 ship acquisition loans and 10 ship refinancings. Hanlon claimed that he did not personally negotiate any of these loans. (A. 1344-1346, 1437-1439, 1358-1359). He said he generally billed Tidal Marine about $100 per hour for his services. (A. 1426-1427).

1. The Trechon Loan

Hanlon gave an account of the acquisition of the Trechon very similar to what the Government had proved

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* Amanatides did not do any typing. (A. 900).

** All three defendants maintained their innocence, and specifically denied their guilt as to each of the charges against them. Since each made certain admissions in the course of his testimony, however, their testimony is described in some detail.

through the testimony of his former law partner, John Sheneman. He admitted representing Tidal Marine in connection with the loan but testified that he was unfamiliar with the line of credit agreement and the representations made to BOA as to the Trechon's purchase price. At first, Hanlon stated that he never learned about the line of credit agreement until after his indictment. When confronted with the January 4, 1971 letter from BOA's attorneys enclosing a copy of the draft of the line of credit loan agreement, however, he admitted that he had received the document. He further testified that the $325,000 he received from the proceeds of this loan were deposited at Irving Trust Company in London into the account of Kowloon Tankship Company, of which he owned all the stock. He acknowledged instructing Irving Trust not to communicate with him at his law offices concerning this account but only at his home. Hanlon also admitted that Victory Development Corporation, to which $215,000 of the proceeds of the Trechon loan were diverted, was a company controlled by Amanatides. (A. 1361-1364, 1468-1478).

2. The ION Loans

Hanlon admitted that he represented the borrowers in connection with these loans and was aware of the charters purportedly securing them. He testified, however, that he had no knowledge that these charters were fraudulent. He also claimed ignorance both as to the purchase price of these ships as represented to NBNA and as to their actual purchase price, despite the fact that he spent nearly 100 hours working on the transaction. He admitted, however, forming a Liberian corporation in the same name as the corporation selling the ships and stated that he did not know of any business that this corporation ever conducted. Similarly, Hanlon admitted that he formed a Liberian corporation in October 1970 with the same name

as one of the purported charterers. He said that he did not know whether the company he formed in October was the same company to which one of the four ships was supposedly chartered. In addition, Hanlon testified that during the summer of 1971 he formed two Liberian corporations in the names of two other of the purported charterers. Again, he admitted that he did not know of any business in which these companies were engaged. He claimed to have acted pursuant to instructions received from Tidal Marine officers and employees. (A. 1347-1352, 1369-1372, 1426-1438).

3. The Tama

Hanlon testified that following the closing of the Tama loan, in which he represented Tidal Marine, he "heard that there was a problem" with the charter securing the loan and that the loan was paid off three or four months after it was made. (A. 1479-1481).

4. The Six Dry Cargo Loan

Hanlon admitted that he knew that the six ships that were the subject of this loan had been previously purchased by Tidal Marine. He claimed, however, that pursuant to Amanatides' instruction, he was representing Tidal Marine, rather than Scufalos, as the bank believed, in connection with this loan. Hanlon contended that he was unaware that the bank and its attorneys thought that they were lending money to Scufalos. (A. 1379-1388, 1503-1509).

5. The May and June Loan

Hanlon claimed that Tidal Marine never took possession of these ships because they were trading with Cuba, and that two other ships were substituted for them

as part of Tidal Marine's acquisition of thirteen ships from Union Commercial. In connection with the financing of the May and June at NBNA, Hanlon testified that although he represented the borrowers, whom he believed to be Scufalos and Livas, he did not know that it had been represented to the bank that they were purchasing the ships. He believed, according to his testimony, that the purpose of the loan was to refinance ships they already owned. (A. 1380-1383, 1509-1513).

6. The Tropis and Tekton Loan

Hanlon admitted performing legal work in connection with the purchase of the Tropis and Tekton from Karageorgis. He also acknowledged that he was aware that there were three year charters on the vessels at the time they were financed at BOA. The NBNA loan was $1,750,000 in excess of the sum of the BOA loans, Hanlon recalled, despite the fact—which Hanlon conceded—that the shipping market had declined during the period between the two loans. Although he represented Tidal Marine in connection with this loan, he claimed, at first, to have no independent recollection concerning the charters submitted to the bank as security for it. (A. 1375, 1392, 1400, 1495-1497). On redirect examination, Hanlon stated that he had been told that both vessels had five year BP charters on them and believed that BP had increased the term of the charters by two years as, he claimed to recall, had been done in the case of two other Tidal Marine ships. (A. 1524-1526).

Hanlon testified that he believed the purpose of the loan was to refinance the vessels and enable Tidal Marine to repay the outstanding BOA loans on the ships. He claimed to be unaware that it was represented to the bank that Scufalos was borrowing the money to purchase the ships and denied so informing the bank's attorney,

Patrick Martin, as Martin had testified. His only explanation as to why he arranged the transfer of the ships between two sets of Tidal Marine subsidiaries if the loan was only represented as being a refinancing, was that Amanatides had told him to do so without giving any reason. A bill of sale was registered, he recalled, reflecting the sale of the Tropis and Tekton from one to another set of Tidal Marine subsidiaries. He also testified that it was Amanatides who instructed him to refuse to pledge the stock of the borrowing corporations at the loan closing. Hanlon admitted supplying the bank's attorney with the information contained in interest equalization tax letters that Union Commercial Shipping Company, which he believed to be a Scufalos company, had owned all the stock of Aries and Pisces for one year. Again he asserted that he received this information from Amanatides. He admitted that the stock books of Aries and Pisces, which he had formed, indicated that all their issued shares were owned by Galaxy Steamship Corporation, Tidal Marine's principal operating subsidiary. These stock books, Hanlon recalled, were maintained in his office. He claimed, however, to have forgotten at the time of the Tropis and Tekton closing that Galaxy owned the Aries and Pisces stock. (A. 1392-1400, 1498-1502).

7. The Tachys Loan

Hanlon acknowledged that he represented Tidal Marine in connection with the $3,250,000 BOA financing of the Tachys and that this loan was secured by a three year BP charter. He testified that he also represented Tidal Marine in connection the $4,500,000 NBNA loan on the Tachys, but claimed that he did not recall what charter was pledged to the bank as security for the loan. Hanlon contended, however, that he believed there was a charter on the Tachys at the time of the loan closing. (A. 1485-1492, 1401-1404).

8. The Aquario Loan

Hanlon testified that Sheneman informed him of the availability of the Shell charter and requested his assistance in finding a ship for the charter and financing for the ship. He admitted that he was familiar with the provisions of the charter as executed, including its term of 33 months. Hanlon also acknowledged that the purchase price of the Aquario was $795,000. His only explanation as to why he filed a bill of sale setting forth the purchase price of the ship as $1,300,000 was that it was necessary to trace the title of the ship. He admitted that Southeast Tankers, in which he owned a 20% interest, only paid $795,000 for the Aquario. Hanlon recalled signing a first preferred mortgage in connection with the FNBB loan that falsely warranted that all the shares of Southeast Tankers were owned by Transoceanic Shipping Company of Piraeus, Limited, but claimed he was unaware that the document contained this representation, though the breach of a warranty could result in the loan going into default.

In connection with the refinancing of the Aquario at NBNA, Hanlon admitted that he submitted a charter, which he received from Livas, and signed a loan agreement, both of which represented that the duration of the charter was for 42 months. He also "would assume" that he responded to a specific inquiry from the bank's attorney as to the length of the charter. In addition, Hanlon testified that he knew that the Aquario was still on a 33 month charter. He claimed, however, to be unaware of the representations he was making to the bank. Hanlon contended that the reason why NBNA was willing to loan $1,500,000 while FNBB only loaned $780,000 was because the charter had become more attractive in light of the declining shipping market. He finally admitted, however, that, if anything, the charter was less valuable because it had six months less to run. (A. 1441-1443, 1447-1468, 1407-1422).

9. The Tagma Loan

Hanlon testified that he was told by Amanatides that Scufalos was borrowing money in order to purchase the Tagma and owned all of the stock of the borrowing corporation. He stated that this was true to the best of his knowledge at the time. (A. 1404-1407, 1513, 1514).

B. Naslas

Naslas first met Amanatides in 1957 and Livas in the early 1960's. He began working for Tidal Marine and its subsidiaries in April 1969 at the time of the company's commencement. His work, at least from late 1970 onwards, was principally in the area of ship operations. He told Amanatides he was resigning in late 1971 because of his dislike of Livas, who was about to become Chairman of the Board. However, Naslas remained with Tidal Marine until June 30, 1972. (A. 1197-1198, 1255, 1186-1189, 1176-1177, 1158-1166).

Naslas testified that he purchased 35,000 shares of Tidal Marine stock for $1,700 at the time he joined Tidal Marine. In the spring of 1972 he sold 25,000 of these shares for slightly under $500,000. He loaned all but $33,000 of this money to a subsidiary of Tidal Marine. The terms of the loan provided that it was payable upon demand and that Naslas would receive interest of 2% a month during any period of default. (A. 1191-1197, 1286-1289; Defendant's Exhibit Z at A. 1961).

1. The Payoffs

Naslas admitted he gave money to Metzger and Shevlin on one occasion. According to Naslas, shortly after

Tidal Marine's Christmas party, Amanatides told him that Metzger and Shevlin would be coming by to pick up photographs taken at the party, which they attended. Immediately after he handed them the envelopes, which he thought only contained the pictures, Amanatides informed him that he had just given $10,000 each to the two bank officers. Naslas testified that at this time he was dealing with Shevlin and Metzger on a daily basis in connection with loan payments, transfers and other matters. (A. 1231-1233, 1201-1206).

Naslas acknowledged that he made and signed the two checks which, according to evidence presented by the Government, were used to generate funds for the second and third payoffs under the pretext that cash was needed for the master of the Aquario, as was indicated on their face. He admitted that the Aquario was in the Caribbean at the time he signed the checks and that, in fact, he had during this same approximately one month period twice transferred funds by wire to the Aquario in the Carribbean to provide cash for its master. His only explanation for signing these checks and writing on one of them in his own handwriting "M/T Aquario—Cash to Master 1/28/72" was that he acted pursuant to Amanatides' instructions. (A. 1228-1233, 1209-1213).

Naslas denied participating in the fourth payoff. (A. 1206-1207). He also denied offering Shevlin a stereo set, but admitted that Shevlin was given golf clubs (A. 1214-1215).

Naslas testified that in July, 1971 he purchased, pursuant to Amanatides' instructions, plane tickets for a trip to Greece by Frank Marone, a BOA, New York, vice president in charge of Tidal Marine's account at that institution, and his family. (A. 1238-1241).

2. The Tropis and Tektor Loan

Naslas testified that he was familiar with Tidal Marine's purchase of the three ships from Karageorgis in February, 1971, and with the fact that charters were attached to these vessels at the time of their acquisition. He was present at the closing of the Tekton financing at BOA and signed as a witness to the execution of an assignment of hire of the three year charter securing the loan, but claimed that he did not know at the time that it had been represented to BOA that the Tekton was on a three year charter. He also said that he was not aware that it had been subsequently represented to NBNA that the Tropis and Tekton were on five year charters. (A. 1259-1263, 1267).

Naslas acknowledged that the NBNA loan had been represented to the bank as a Scufalos transaction.* He admitted, however, that both the purported selling and purported purchasing companies were Tidal Marine subsidiaries and that the transaction was actually a Tidal Marine refinancing. He said that he did not know why, if the transaction was a refinancing, it was necessary to transfer the ships from one set of Tidal Marine subsidiaries to another. (A. 1264-1268).

Naslas also testified that at approximately the time of the Tropis and Tekton loan, Tidal Marine began experiencing serious financial problems and required additional bank loans. At one point, Naslas obtained a $95,000 loan in his own name from Chemical Bank to provide additional funds for Tidal Marine. (A. 1238, 1199-1200).

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* Interestingly, Hanlon testified that he thought NBNA was financing the ships as Tidal Marine ventures. (A. 1392-1393).

3. The Aris Loan

Naslas testified that at the time he represented that the Aris was on a five year charter, he believed that to be the truth. He recalled, however, that some four or six weeks prior to the closing of the Aris loan he witnessed Amanatides' signature on a document in London. He claimed to be unaware of either the contents or nature of this document. (A. 1220-1224, 1138-1142).

4. The Tachys Loan

Naslas testified that he believed the Tachys to be on a five year charter when he so represented at the time of the closing of the NBNA Tachys loan. He admitted, however, that although up to the time he left Tidal Marine the Tachys had never operated under the charter securing the loan, he probably told Patrick Martin that the Tachys had tendered under the charter. (A. 1224-1225, 1271-1273; GXS 1552, 1555).

5. The Tagma Loan

Naslas admitted that the Tagma was presented to NBNA as a Scufalos loan, but claimed that he believed this to be the truth at the time. He acknowledged, however, that he had communications with a BOA, New York, loan officer, Frank Marone, concerning the Tagma prior to its financing at NBNA. In addition, a telex received by Naslas indicated that he had been in communication with the president of Tidal Marine concerning the Tagma as early as March, 1972. (A. 1280-1285, 1225-1226; GXS 1107, 1558).

C. Katritsis

Katritsis testified that he went to work as a part time employee at Tidal Marine's New York offices in November, 1971, and became a full time employee in January, 1972. He worked principally with Amanatides, who was his uncle. Katritsis recalled signing some charters in July, 1971 on behalf of six Tidal Marine corporations at Amanatides' request. In August, Amanatides asked him to go to Hanlon's office to sign additional documents on behalf of the same six corporations. Katritsis also signed documents, at Amanatides' request, in his capacity as an officer of one of the corporations involved in the acquisition of the Aquario. He claimed that he signed all of these documents in good faith. (A. 1296-1304, 1327-1328, 1334-1335).

Katritsis also recalled that in January, 1972 Amanatides instructed him to pick up a check from Naslas' office and cash it at NBNA, which he did after obtaining Shevlin's approval and endorsing the check.* (A. 1330-1331).

Katritsis testified that although he typed poorly, he occasionally did typing for Amanatides. He asserted, however, that he only did this when nobody else was available. Katritsis did not recall ever typing a financial statement containing inflated earnings, as Joyce Walker testified. He admitted, however, serving as a front for Amanatides in obtaining a series of loans at Chemical Bank.

After Amanatides had left New York for Greece and the investigation into Tidal Marine's affairs had commenced, Katritsis arranged for the shipment of bills of lading for two trunks containing Amanatides' effects, which had been shipped to Greece. (A. 1335-1339).

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* The Government's evidence established that a check dated January 6, 1972, signed by Naslas, endorsed by Katritsis and made out to cash was used to generate the funds for one of the payoffs to Shevlin and Metzger. See page 20, *supra*.

1. The Tropis and Tekton Loan

Katritsis admitted signing the assignments of charterhire as an officer of Aries and Pisces but asserted that at the time he was unaware that the charters to which they referred were fraudulent. He testified that he relied upon Hanlon and Amanatides in signing those documents. Katritsis acknowledged that Aries and Pisces were Tidal Marine corporations. (A. 1308-1310).

Katritsis also recalled signing the interest equalization tax letters stating that all the stock of Aries and Pisces had been owned by Union Commercial Shipping Company for one year. He stated that he believed the statements to be true at the time. (A. 1310-1314).

Katritsis acknowledged, however, that he was aware of instances in which Amanatides used fronts to obtain loans because of a bank's refusal to loan him any more money. He testified that in late 1971 and early 1972 he served as a front for Amanatides in obtaining a series of bank loans. Amanatides told him that the bank would no longer loan him money and another name was needed. Katritsis signed as the borrower, but Amanatides used the proceeds of the loans and arranged for their repayment. (A. 1328-1330; 1332-1333).

2. The Tachys Loan

Katritsis testified that in his capacity as an officer of the borrowing corporation he signed the five year charter, which was submitted to the bank as security for the loan. He stated that he believed the charter was valid at the time he signed it. Katritsis admitted that Axiotakis' testimony as to the circumstances under which he caused Axiotakis to sign the certificate attesting to the validity of the forged charter was substantially correct. (A. 1318-1324, 1331-1332).

ARGUMENT

POINT I

The evidence was more than sufficient to support the jury's verdicts of guilt.

A. Introduction

All three defendants raise various arguments in support of their basic contention that while the evidence established that they made false statements and engaged in fraudulent activities as charged, it was insufficient to establish that they had guilty knowledge in connection with various charges. Preliminarily, however, it must be noted that their entire argument is predicated upon an erroneous view of the law. The applicable test is "whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt." *United States* v. *Taylor*, 464 F.2d 240, 243 (2d Cir. 1972). There is no requirement that the inferences relied upon by the Government be compelled by the evidence or that the evidence foreclose all inferences supporting innocence. *Holland* v. *United States*, 348 U.S. 121, 139-140 (1954); *United States* v. *Taylor*, *supra*, at 244; *United States* v. *Grunberger*, 431 F.2d 1062, 1066 (2d Cir. 1970). *See also United States* v. *Pfingst*, 477 F.2d 177, 197 (2d Cir.), *cert. denied*, 412 U.S. 941 (1973). As this Court recently reaffirmed, "The prosecution . . . is under no duty to negate all possible innocent inferences from a set of circumstantial facts. . . ." *United States* v. *Singleton*, 532 F.2d 199, 203 (2d Cir. 1976).*

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* Furthermore, appellants' attack upon the inferences drawn by the Government overlooks the fact that their guilt was supported at trial by substantial direct, as well as circumstantial, evidence.

In addition, although appellants request this Court to examine each act of each defendant in isolation, it is well established that "pieces of evidence must be viewed not in isolation but in conjunction." *United States* v. *Geaney*, 417 F.2d 1116, 1121 (2d Cir.), *cert. denied, sub nom. Lynch* v. *United States*, 397 U.S. 1028 (1969). Each episode gains color from the others. *United States* v. *Monica*, 295 F.2d 400, 401 (2d Cir. 1961), *cert. denied*, 368 U.S. 953 (1962); *United States* v. *Calabro*, 449 F.2d 885, 889-890 (2d Cir. 1971). The evidence of guilty knowledge, viewed as a whole, acquires a significance beyond that of its component parts. *United States* v. *Bottone*, 365 F.2d 389, 392 (2d Cir.), *cert. denied*, 385 U.S. 974 (1966); *United States* v. *Wisniewski*, 478 F.2d 274, 279-280 (2d Cir. 1973); *United States* v. *White*, 124 F.2d 181, 185 (2d Cir. 1941); *Aiken* v. *United States*, 108 F.2d 182, 183 (4th Cir. 1939). These principles are particularly applicable to the trial of Hanlon, Naslas and Katritsis. The evidence revealed a persistent course of conduct engaged in by all three defendants over a substantial period of time despite repeated, unavoidable and direct indications that they were participants in a scheme to defraud lending institutions. Although appellants contend that knowledge may not be inferred from the mere fact of falsity, this is a case where from each "actor's special situation and continuity of conduct an inference that he *did* know the untruth of what he said or wrote may be legitimately drawn." *Bentel* v. *United States*, 13 F.2d 327, 329 (2d Cir.), *cert. denied, sub nom. Amos* v. *United States*, 273 U.S. 713 (1926) (emphasis in original). Moreover, evidence that the defendants knowingly misrepresented or were aware of misrepresentations in connection with one fact, permitted the inference that their misrepresentation as to another fact was not inadvertent. *United States* v. *Simon*, 425 F.2d 796, 809 (2d Cir. 1969), *cert. denied*, 397 U.S. 1006 (1970). When viewed as a whole and evaluated in terms of the applicable standard of law, the evidence supporting the

jury's verdicts was overwhelming and appellants' contention to the contrary is nothing but an attempt to persuade this Court to accept arguments presented at trial that the jury properly found wanting.

B. The Proof as to Hanlon

The evidence established, as Hanlon apparently concedes, Brief at 21, that during 1970-1972 Hanlon spent virtually all of his professional time on Tidal Marine legal matters, was familiar with and a participant in Tidal Marine's securing of loans to finance its ship acqusitions and profited extensively from his relationship with Tidal Marine. He also was a close personal friend of the president of Tidal Marine. Moreover, Hanlon concedes that sufficient evidence was introduced to support his convictions on the charges relating to the Tropis and Tekton, Aquario and Tagma loans.

In the first of these transactions, the proof established that Hanlon participated in falsely representing to NBNA that Scufalos was the borrower, when in fact, as Hanlon well knew, the loan was strictly a Tidal Marine venture. He also assisted in closing the loan at which falsified five year BP charters were presented to NBNA, despite the fact that less than a year before he had done substantial legal work in connection with Tidal Marine's acquisition of the vessels, which were conveyed subject to the actual three year BP charters, and had also participated in their initial financing at BOA in London, where the three year BP charters were assigned as collateral. The charges with respect to the Aquario, which Hanlon had been instrumental in purchasing and in which he personally held a 20% interest, related to a refinancing at NBNA where, according to the evidence, Hanlon represented in three different ways, two of them documentary, that the vessel

was on a 42 month charter when in fact, as he admitted he knew, it was only chartered for 33 months. To this his only defense was his testimony that he had not noticed the discrepancy, even though he had personally submitted the forged charter, quite different from the true one in format, to NBNA and had personally signed the loan agreement containing the misrepresentation. The Tagma transaction was the last of the series of loans in which Scufalos was used as a front for Tidal Marine. Hanlon represented to NBNA that this was a Scufalos loan, when in fact, the evidence indicated, he knew it was a Tidal Marine venture.

Significantly, the misrepresentations with which Hanlon was charged in these and other counts did not involve collateral concerns, but rather the matters most critical to the integrity of the loan. The jury, of course, was entitled to consider all of the foregoing in deciding whether Hanlon acted with a fraudulent state of mind in relation to the transactions which are the subject of the remaining counts concerning which Hanlon challenges the sufficiency of the evidence. *United States* v. *Simon*, *supra*, 425 F.2d at 809; *United States* v. *Kaufman*, 453 F.2d 306, 310-311 (2d Cir. 1971).

1. The Trechon Loan—Counts 18 and 22

The evidence directly established that BOA loaned Tidal Marine $4,000,000 to purchase the Trechon on the basis of representations that the purchase price was $5,500,000, when in fact it was less than $3,400,000. This loan was made pursuant to a line of credit agreement with Tidal Marine under which BOA would loan only *the lower* of up to 75% of the purchase price of a ship or 60% of its value. The Government's contention was not that Hanlon directly made the misrepresentation

but that he took substantial steps to close the loan as Tidal Marine's attorney with full knowledge that it was predicated upon a fraudulent representation as to the Trechon's purchase price.*

There can be no doubt that Hanlon was fully aware that the purchase price of the Trechon was $3,385,000 and that the loan amount was $4,000,000. His knowledge that BOA was lending Tidal Marine substantially more money than the Trechon had cost alone compelled the conclusion that Hanlon was aware that the purchase price of the Trechon had been falsely represented to the BOA. He also knew, by his own admission, that more than $200,000 of the loan proceeds were obtained directly by Amanatides through a privately held Liberian corporation. Hanlon himself received $325,000 of the proceeds, not openely but through a bank account Hanlon opened for that purpose in London in the name of his own Liberian shell corporation.

Moreover, the line of credit ** under which the Trechon was financed provided for the financing of four Tidal Marine ship acquisitions for a total amount of $12,400,000 and was the largest single credit transaction Tidal Marine ever had. As Tidal Marine's attorney, it is inconceivable that Hanlon was unaware of an event so important to Tidal Marine's plans. Direct evidence of Hanlon's knowledge was introduced in the form of a letter to Hanlon dated January 4, 1971, from BOA's attorneys enclosing a copy of the line of credit loan agreement under

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* Hanlon was charged under the wire fraud statute.

** Hanlon appears to intimate that the line of credit loan agreement was not in effect at the time of the Trechon loan. Brief at 10, 23. Although the agreement may not have been reduced to its final written form until a later date, it was in effect from October 1970 and the Trechon loan was made pursuant to it. (A. 192-196; GXS 280, 284, 281).

which the Trechon was financed setting forth the restriction of loan amount in the line of credit. Although this was almost a month after the loan closing, the text of the letter indicated that the Trechon loan had been made pursuant to the agreement and strongly suggested that it was not the first communication between Hanlon and BOA's attorneys concerning the line of credit and the loan agreement. Indeed it is difficult to imagine how Hanlon could have represented Tidal Marine in connection with this loan and have billed them $2,170 for his services without knowledge of the agreement and representations pursuant to which the loan was made.

Even accepting *arguendo*, the inferences that Hanlon would have preferred the jury to draw, it is plain that Hanlon was fully aware of the fraud that had been committed when he received a copy of the line of credit loan agreement enclosed in the January 4, 1971 letter. This "would have caused an honest lawyer to erupt in fury. . . ." *United States* v. *Frank*, 494 F.2d 145, 153 (2d Cir.), *cert. denied*, 419 U.S. 828 (1974). Rather than reacting with outrage, however, Hanlon remained silent, kept $325,000 of the proceeds of the loan which he had received and proceeded to represent Tidal Marine in numerous other fraudulent transactions until its collapse nearly two years later.

Finally, the evidence established that Hanlon had a major financial stake beyond that of an attorney in closing the Trechon loan because of the $325,000 which he received, unknown to the BOA, from the proceeds of this loan (in addition to $16,925 kicked back from the broker's commission) as payment for his services in connection with the Trechon purchase and financing. Thus Hanlon had a strong financial interest in assuring that BOA loaned sufficient money to cover not only the purchase price of

the ship but also the additional funds that he was to receive. The totality of circumstances certainly supported, if they did not compel, the conclusion that Hanlon knowingly furthered a fraudulent transaction. *See United States* v. *Jacobs*, 475 F.2d 270, 281 (2d Cir.), *cert. denied sub nom. Thaler* v. *United States*, 414 U.S. 821 (1973).

2. The ION Loans—Count 10

The thrust of the Government's contention was that at the time Hanlon closed these four loans he was fully aware that they were predicated upon misrepresentations to NBNA of the purchase price of the ships and the charters supposedly serving as security for the loans. Again, the evidence conclusively established that at least three out of the four charters submitted to the bank were forgeries and that the total purchase price represented to the bank was more than $600,000 in excess of the actual purchase price. There was also more than sufficient evidence to support the inference that Hanlon was aware of these misrepresentations when he closed the loans.*

Hanlon represented Tidal Marine in connection with all four of these loans, participated in the negotiations, and billed Tidal Marine $11,000 for his services, which reflected the expenditure of substantial time. Although it was represented to NBNA that the purchase price of these ships totaled $2,700,000, the actual purchase was under $2,100,000. About a month prior to the earliest of these loan closings, Hanlon formed and billed Tidal Marine for the formation of a Liberian corporation with the identical name of the corporation selling the ships. Hanlon also formed and billed Tidal Marine for the formation of three Liberian corporations with names identical

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* The charge here was once again wire fraud.

or similar to the names of three of the companies to which three of the ships were purportedly on charter. One of these corporations was formed three months prior to the loans; the other two some six months after the loans. The names of the companies Hanlon formed were deceptively similar to those of recognized and substantial shipping companies.

The jury was fully entitled to conclude on the basis of Hanlon's intimate relationship to this loan transaction and to the affairs of Tidal Marine that he was fully aware of the conditions under which these ships were purchased and financed. This inference is strengthened by Hanlon's role in forming the four Liberian corporations which, as far as the record reveals, and as far as Hanlon knew, had no legitimate business function whatsoever. Indeed the conclusion is inescapable that these corporations were formed to give the veneer of legality to Tidal Marine's representations, if the necessity ever arose. Although Hanlon formed two of these corporations six months after the loan closings, his actions are nevertheless probative of his intent at an earlier time. Certainly at the time he received the request to form these corporations he must have realized that the charters previously submitted to the banks were fraudulent. Again, an honest lawyer, rather than forming the corporations would have reacted in outrage if he suddenly discovered that he had inadvertently assisted the completion of a fraudulent transaction. *United States* v. *Frank*, 494 F.2d 145, 153 (2d Cir.), *cert. denied*, 419 U.S. 828 (1974). Moreover, the jury was not required to view those four loans in isolation. It could take notice of the fact that Hanlon formed a number of Liberian corporations which were used to further other fraudulent loan transactions in which he was involved. (GX 900C).

3. The Six Dry Cargo Loan—Count 36

This was the first of the series of loans in which Mark Scufalos was used by Tidal Marine as a front in obtaining loans from NBNA in order to circumvent the bank's decision not to lend additional money to Tidal Marine. The Government contended at trial that Hanlon knowingly participated in this scheme to defraud NBNA by serving as Tidal Marine's attorney in a transaction where it was represented to the bank that the purpose of the loan was to enable Scufalos to buy out his partners' interests in six dry cargo vessels, when, in fact, these ships were among the thirteen purchased by Tidal Marine from interests represented by Scufalos five months earlier.

Scufalos' testimony, documentary evidence and Hanlon's billing records clearly established that Hanlon represented Tidal Marine in connection with its acquisition of the six ships, part of the fleet of thirteen acquired at the same time. Similarly, the evidence directly established that Hanlon represented the borrowers in connection with the NBNA loan on these six ships. Indeed, he actually signed the loan agreement on behalf of the borrowing corporations. Furthermore, it was established that Hanlon was fully aware that the loan was in fact a Tidal Marine venture. He had no contact with Scufalos in connection with the loan and billed Tidal Marine $9,000 for his legal services.

Hanlon apparently concedes all of the foregoing. He appears to argue however, that the evidence failed to establish his awareness of the fact that the loan had been presented to the bank as a Scufalos transaction. Brief at 24. The Government, of course, is not required to eliminate every hypothesis consistent with innocence. See page 49, *supra*. This is especially so in the case

of an hypothesis which borders on the absurd. Its acceptance would require the jury to believe that a man who represented Tidal Marine and who was in communication with the bank's attorney and bank officers in connection with the loan had no idea that the bank was under the impression and had approved the loan on the basis of the representation that Scufalos rather than Tidal Marine was the borrower. Moreover, Amanatides, the mastermind of this particular fraud, could not conceivably have taken the risk of permitting Hanlon to operate under the assumption that the bank regarded the loan as a Tidal Marine venture because of the overwhelming likelihood that Hanlon would inadvertently expose the fraud in his dealings with the bank and its attorneys by presenting himself as representing Tidal Marine.

Even more importantly, Hanlon's actions established that he was involved in a calculated attempt to prevent the bank and its attorneys from learning the truth. Each of the loan closing files (there was one for each of the six ship owning corporations) contains an interest equalization tax letter executed by Hanlon warranting that each of the borrowing companies' stock was owned as set forth in the schedule annexed; the schedules annexed are blank. (GXS 26-31). In addition, while the opinion letters signed by Hanlon in connection with the financings with Farber Commercial Corporation and the General Electric Pension Trust of four other of the thirteen ships purchased simultaneously from Scufalos by Tidal Marine contain averments indicating that the loans were Tidal Marine ventures, his opinion letter in connection with the six dry cargo loan does not even mention Tidal Marine. Of course, a true statement as to the ownership of the stock in the borrowing corporations or mention of Tidal Marine in the opinion letter would have blown the lid on the fraud. Indeed, this is the only rational

explanation for Hanlon's actions. Moreover, the jury was entitled to consider, in connection with Hanlon's state of mind, the testimony of Patrick Martin that Hanlon had falsely represented the Tropis and Tekton as Scufalos ships when they were refinanced at NBNA just four months after this transaction, despite the fact, as the evidence showed, and as Hanlon admitted at trial, the vessels belonged to Tidal Marine and Hanlon knew it. *United States* v. *Super*, 492 F.2d 319, 323 (2d Cir.), *cert. denied sub nom. Burns* v. *United States*, 419 U.S. 876 (1974).

4. The Tachys Loan—Counts 65 and 66

The evidence established that in April, 1971, the time of the BOA loan, Hanlon was fully aware that the Tachys was on a three year BP charter. Less than a year later, NBNA loaned a sum of $1,250,000 in excess of the BOA loan on the basis of representations that the Tachys was on a five year BP charter. Hanlon represented Tidal Marine in connection with both loan transactions and actively participated in representations made to NBNA about the existence of the five year BP charter. This by itself was sufficient to support an inference that Hanlon knew that the Tachys was not on a five year charter. It would be remarkable indeed if a lawyer who devoted nearly all of his time to Tidal Marine's affairs would be under a misapprehension as to the existence or terms of a charter on a ship with which he had been closely involved over a period of time.

Moreover, the jury could consider the fact that Hanlon was fully aware of and a participant in misrepresentations concerning the existence of charters pledged by Tidal Marine as security for loans. Hanlon learned, following the Tama loan, that the charter securing that loan did not exist. Evidence, of which Hanlon does not contest the sufficiency, established that was fully aware

of the fraudulent representations made in connection with the Tropis and Tekton * and Aquario charters at the time he closed these loans. Indeed, the conclusion was almost inescapable that Hanlon's actions in connection with the Tachys transaction reflected another episode in a continuous scheme of fraudulent conduct which extended from the Trechon loan in late 1970 until Tidal Marine's collapse in the summer of 1972.

C. The Proof as to Naslas

The evidence established that Naslas played a central role in and was intimately familiar with the affairs of Tidal Marine from its founding through June, 1972. His participation in the operation of Tidal Marine's fleet of ships, from which, of course, Tidal Marine earned its income, placed him at the company's vortex. Moreover, his actions in making loan requests to bank officers and handling loan repayments reveal that his function was far more than a clerical one, as he would have this Court believe. Similarly, Naslas' role in paying bribes to officers of NBNA's Ship Loan Department to procure the approval of several loans, charges on which Naslas concedes the evidence was sufficient to support his conviction, reveals that he was at the center of Tidal Marine's fraudulent activities. Finally, Naslas had a major financial stake in Tidal Marine's fate. As the holder of Tidal Marine stock that had increased in value from $1,700 to close to $500,000, Naslas had a strong interest in the

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* Indeed, the misrepresentations as to the Tachys charter are virtually identical to those made as to the Tropis and Tekton charters. Moreover, all three ships were purchased and financed at BOA with three year charters. The only distinction is that the fraud involving the Tachys was even more egregious because by the time of its financing at NBNA it no longer was on any charter at all.

price of Tidal Marine stock, which would be positively affected by Tidal Marine's ability to obtain financing for its ship acquisitions and to relieve its shortage of working capital.* This evidence, of course, was probative of Naslas' state of mind in connection with the acts for which he was tried.

1. The Tropis and Tekton Loan—Count 51

Count 51 charged Naslas with conspiring with others to make false statements to NBNA in connection with the Tropis and Tekton loan. The two false representations made in connection with this loan concerned the identity of the borrower and the length of the charters securing the loan.

Uncontroverted evidence established that although it was represented to the bank that Scufalos was applying for the loan in order to purchase the Tropis and Tekton, Tidal Marine was the actual borrower. Naslas admitted that while the loan had been represented to NBNA as a Scufalos deal, it was in fact a refinancing and that the Tropis and Tekton were merely transferred between two sets of Tidal Marine subsidiaries. Indeed, Naslas sent a telex following the closing of the loan which referred to the transfer of the Tropis and Tekton to new corporations as a refinancing. (GX 803).

The evidence also established that Naslas was familiar with the purchase of the Tropis and Tekton from Karageorgis, at which time they were fixed on three year charters. In addition, he was present at the closing of the BOA financing of the Tekton and signed a document as witness which stated that the Tekton was on a three year charter. Moreover, Naslas participated in the operation of the Tekton.

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* After Naslas sold his stock and loaned Tidal Marine money, he had a similar interest in Tidal Marine's solvency.

The jury was fully entitled to conclude that Naslas knew that it was falsely represented to NBNA that the ships were on five year charters. He was both vice president of Tidal Marine and of the Tidal Marine subsidiaries which took possession of the ships. Naslas not only attended the loan closing, but executed a power of attorney to register the vessels in Panama, which the bank required before it released a large portion of the loan proceeds. (A. 469).

Furthermore, it was extremely probative that this was the first of the four loan transactions in connection with which the loan officers of NBNA were promised payoffs. Naslas was convicted as a participant in this scheme, and he does not claim that the evidence was insufficient to support that conviction. Finally, Naslas was fully aware of Tidal Marine's acute need for additional funds and had a major financial stake in seeing to it that the corporation remained a going concern.

2. The Aris Loan—Counts 62 and 63

The proof of Naslas' participation in making fraudulent misrepresentations to NBNA concerning the charter securing the Aris loan was simple. On December 29, 1971, the day of the closing, Naslas represented in writing, that the Aris was on a 5 year charter with Wintershall, A.G. On November 16, 1971, just six weeks earlier, Naslas had signed as a witness to Amanatides' signature on the authentic three year charter with Wintershall. This was sufficient to support a finding that Naslas was aware of the true terms of the Aris charter. Naslas' relation to the affairs of Tidal Marine was not that of a witness to a signature on a document in which he has no interest. The jury could permissibly consider that it would be remarkable if the person in charge of Tidal Marine's ship

operations was unaware of the length of the charter under which one of its ships was operating. Moreover, the Aris was one of the four loan transactions in connection with which payoffs were made to loan officers. Naslas participated in these payoffs. The inference is unavoidable that he was aware that these loan transactions were rife with fraud. In addition, as a result of his experience with the Tama loan, in April, 1971 in connection with which, as he knew, it was discovered that a charter which Tidal Marine pledged to NBNA was nonexistent, he had been placed on notice as to the high risk that Tidal Marine was involved in a fraudulent enterprise.

3. The Tachys Loan—Counts 65 and 66

Naslas claims that the evidence was insufficient to support the jury's finding that he was aware of the falsity of his representation that the Tachys was on a five year BP charter. The evidence established, however, that the Tachys not only was not chartered for five years but was not on any charter at all when the Tachys loan closed. It would be amazing, to say the least, if the vice president of Tidal Marine who specialized in ship operations would be unaware of the fact that one of its ships was without a charter—especially when this would be reflected by the failure to receive charterhire or income from the ship. Indeed, given the discovery several months earlier that there was no charter on the Tama, this must have been an area of concern for Naslas. Furthermore, inferences could be permissibly drawn as to his guilty state of mind from his conduct in connection with this loan transaction.

The bank's attorney stated that when he gave Naslas the letter to sign guaranteeing the purported Tachys charter on behalf of Tidal Marine at the closing, Naslas looked startled and left the room before signing it. The evidence suggested that Naslas had good reason for his reluctance,

because if the charter did not exist, by signing the document Naslas was making Tidal Marine liable for the full amount of the loan. In addition, Naslas lied to the bank's attorney following the closing when in response to inquiries Naslas stated that the Tachys had been tendered and accepted by the charterer and that the charterhire had been inadvertently paid into a BOA account. In fact, Naslas admitted during his own testimony and the evidence established that he was aware that the Tachys never operated under the charter.

Further, a week before the Tachys closing Naslas paid $10,000 each to two NBNA bank officers. The Tachys was one of the four loans which the bank officers agreed to facilitate in exchange for receiving payoffs. By the time it closed Naslas was both aware of and a participant in Tidal Marine's corrupt and fraudulent activities.

4. The Tagma Loan—Count 76

This was the last of the loan transactions in which Scufalos served as front for Tidal Marine. It was made at a time when Tidal Marine was experiencing a critical shortage of working capital. In connection with this loan, Naslas signed an interest equalization tax letter submitted as a condition of the closing that falsely represented that Scufalos owned all the stock of the borrowing corporation.*

The evidence clearly established that Naslas knew that this loan was a Tidal Marine venture and that Tidal Marine rather than Scufalos, as represented to NBNA,

* Naslas' claim that the Government's contention that he read and represented the truth of this assertion "is barely plausible," Brief at 21, is difficult to understand. The letter explicitly referred to and incorporated the attachment which set forth this information and is meaningless in the absence of the attachment. The weight to be accorded this argument may be measured by the fact that it was never made to the jury.

was purchasing the Tagma. The telex traffic addressed to Naslas at Tidal Marine's offices reflected his involvement in the exchange of information concerning the Tagma's purchase and financing. In addition, Naslas had previously communicated unsuccessfully with Frank Marone * of BOA, New York, about obtaining a loan on the Tagma. (GX 1107). Moreover, Naslas received a letter from Hanlon, Tidal Marine's attorney and the man who represented the borrower in this transaction, enclosing copies of documents executed at the closing. He was also an authorized signatory of the borrower's account at NBNA. The only rational conclusion to be drawn from these facts is that Naslas knew the Tagma was a Tidal Marine rather than a Scufalos deal.

Furthermore, by the time of the Tagma loan, Naslas knew to a certainty that Tidal Marine and its top officers were engaged in a scheme to defraud NBNA. Naslas was fully aware that Scufalos had fronted for Tidal Marine in connection with the Tropis and Tekton loan. Indeed that loan was made pursuant to an agreement to make payoffs to bank officers in which the jury found Naslas to be a participant.** The evidence also directly established that in March, 1972, after the Tachys loan closing, Naslas was informed that the officers of the Ship Loan Department had discovered that, as in the case of the Tama, there was no charter on the Tachys.

D. The Proof as to Katritsis

Although Katritsis was only charged in connection with two loan transactions, significant additional evidence unrelated to these transactions but highly probative of his state of mind was introduced. Katritsis served as

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* Marone entered a guilty plea to overvaluing Tidal Marine stock in connection with a Tidal Marine loan at BOA.

** Additional payoffs were promised, but apparently not paid, to the three Ship Department loan officers in connection with the Tagma loan.

Amanatides' confidant and handled matters that Amanatides wished to conceal from other Tidal Marine employees. He also played an important role in assuring the successful completion of several Tidal Marine loan transactions, apart from those in which he was charged, by serving as an officer of the corporations through which Tidal Marine was borrowing money and by signing a number of forged charters submitted to NBNA as security for loans. There was also evidence that Katritsis' actions were far from unknowing. Joyce Walker, Amanatides' secretary, testified that in early 1972 Katritsis knowingly inflated the figures on a financial statement in order to induce a bank to extend a loan. In addition, Katritsis fronted for Amanatides in a series of loans. The jury was entitled to consider this evidence in connection with the charges on which Katritsis was tried. Finally, Katritsis' own testimony provided a substantial basis for concluding that he acted with a fraudulent intent. *See United States* v. *Singleton*, 532 F.2d 199, 203 n.5 (2d Cir. 1976); *United States* v. *Pui Kan Lam*, 483 F.2d 1202, 1208 n.7 (2d Cir. 1973), *cert. denied*, 415 U.S. 984 (1974); *United States* v. *Arcuri*, 405 F.2d 691, 695 n.7 (2d Cir. 1968), *cert. denied*, 395 U.S. 913 (1969).

1. The Tropis and Tekton Loan--Counts 51 and 56-59

The uncontroverted evidence established that Katritsis signed the assignments of charterhire representing that the Tropis and Tekton were both on five year charters (Counts 51, 58 and 59) and the interest equalization tax letters stating that Union Commercial Shipping Company had owned all the stock of Aries and Pisces, the ship owning corporations, for one year (Counts 51, 56 and 57). He argues that the evidence failed to establish his knowledge of the falsity of these representations at the time he made them. An examination of the evidence,

however, leads to the unavoidable conclusion that Katritsis was fully aware that he was participating in a fraudulent venture.

Despite Katritsis' suggestions to the contrary, he did not sign these documents as a stranger, but rather in his capacity as president of Aries and Pisces, the corporations purportedly purchasing the vessels. In addition, he was an employee of Tidal Marine who worked closely with its president, was familiar with its affairs and participated in many of its financial transactions. Moreover, Katritsis admitted that he was fully aware that Aries and Pisces were Tidal Marine corporations. (A. 1309-1310). Under these circumstances the jury was entitled to conclude that Katritsis' testimony that he believed his statements as to the ownership of Aries and Pisces stock were true at the time he made them was incredible.* *United States* v. *Pui Kan Lam*, *supra*, 483 F.2d at 1208; *United States* v. *Singleton*, *supra*, 532 F.2d at 204.

Finally, it was around this very time, December, 1971, that Katritsis began fronting for Amanatides in a series of substantial loans at Chemical Bank. This, of course, was analogous to the use of Scufalos as a front for Tidal Marine in the Tropis and Tekton transaction. In addition, the testimony of Joyce Walker, Amanatides' secretary, as to Katritsis' role in typing inflated Tidal Marine earnings figures to obtain a loan was highly probative of the intent with which he represented that the Tropis and Tekton were on inflated charters. It is also not without significance that it was Katritsis who picked up the $20,000 in cash that was used by Amanatides to pay the

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* Katritsis' insinuation that these misrepresentations are excusable, Brief at 17, because they appear on attachments incorporated by reference in the letters is absurd. See A. 471-472; GX 40A, 40B. Indeed the letters are meaningless in the absence of the attachments.

second installment on the bribes of Metzger and Shevlin and that it was Katritsis who signed the bill of sale purportedly transferring the Aquario from Brent Shipping Co. to Southeast Tanker Co., a document whose only purpose was to fabricate a higher purchase price on the vessel.

2. The Tachys Loan—Counts 65 and 66

Katritsis' claim of insufficiency as to these charges is that the evidence failed to establish that he knew his representation as to the length of the charter was false. Here again, however, Katritsis was an officer of the corporation that owned the Tachys at the time he made the misrepresentation and played an active role in facilitating the sale of the vessel to Panayotopulos and its financing at NBNA. (A. 1318-1319). In addition, Katritsis was a signatory of the forged charter.*

Moreover, Axiotakis' inquiry to Katritsis concerning the authenticity of the charter to which Katritsis asked him to attest, brought the question of its validity directly to his attention. The jury could permissibly infer that Katritsis' reply to the effect that of course the charter was real and that Axiotakis should sign the attestation, was not the reply of one unaware of what he was doing, but rather of one who wanted to quickly forestall any further inquiry. In addition, the fact that Katritsis chose to ask Axiotakis, who had already resigned as an officer of the corporation which owned the Tachys, to attest to the validity of the fraudulent charter rather than doing so himself as he could have as an officer of the corporation, suggests that he wanted to avoid direct responsi-

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* Katritsis had also signed the forged Transoceanic charters securing the six dry cargo loan. The evidence compelled the conclusion that this pattern of conduct was not the result of inadvertence.

bility for a further misrepresentation. Finally, an inference as to Katritsis' guilty state of mind could once again be drawn from his role in fronting for Amanatides in loan transactions and knowingly preparing inflated figures as to Tidal Marine's earnings.

POINT II

The trial Court's instructions to the jury were entirely correct and clearly informed the jury that it could not convict on a finding of negligence.

The trial Court's charge on the issue of knowledge clearly instructed the jury that actual knowledge, whether directly or circumstantially proven, was necessary to convict any defendant for making a false statement. Moreover, the jury was explicitly told, in a charge substantively consistent with the defendants' requests, that a defendant could not be convicted if he believed that a statement he made was true, no matter how recklessly he acted, and that honesty and good faith were a complete defense.*

The charge on knowledge when viewed in its entirety, *United States* v. *Gentile*, 530 F.2d 461, 469 (2d Cir.), *cert denied*, 44 U.S.L.W. 3545 (June 14, 1976), consisted of the following elements: (1) a general definition of knowledge; (2) a statement of various factual circum-

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* Appellants' argument that the inclusion of a "reckless disregard" charge violated "procedural fairness", Brief at 29, is belied (1) by the fact that prior to the commencement of trial the defendants were served with a copy of the Government's requests to charge which included a "reckless disregard" charge, (2) by their own request for such a charge and (3) by their failure to object to the inclusion of such a charge when they had the opportunity to do so.

stances from which knowledge could be inferred, and (3) a supplemental instruction that honesty and good faith on the part of any defendant were a complete defense.*

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* The trial Court's general instruction on the element of knowledge was as follows:

> "The second element of this false statement offense under Section 1014 is the subject of knowledge.
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> The government must establish beyond a reasonable doubt that the defendant whom you are considering knew the statement or report to be false or the security overvalued. Medical science as yet has devised no instrument by which you can go back and determine what purpose was in one's mind when he performed certain acts. Rarely is direct proof available that one had knowledge of a fact or intended to bring about a result. Now and then a person may commit himself in writing or make a statement in which he concedes that as of a certain time he had knowledge of the fact and that he acted with specific intent to achieve a specific result. But of course, that is rare, and is the exception rather than the rule.
>
> The intent with which an act is done is often more clearly and conclusively shown by the act itself or by a series of acts than by words or explanations of the act long after its occurrence. Frequently, the act of individuals speak their intention more clearly than do their words.
>
> One may apply the old adage, 'Actions speak louder than words.'
>
> Accordingly, intent, willfulness and knowledge may be established by surrounding facts and circumstances as of the time acts occurred or events took place and the reasonable inferences to be drawn therefrom. This is referred to as circumstantial evidence and if believed, it is as acceptable as direct evidence.
>
> Guilty knowledge cannot be established by demonstrating inadvertence, carelessness or other innocent reasons on the part of the defendant. This applies wherever in this charge reference is made to knowledge and willfulness.
>
> However, it is not necessary that the government prove to a certainty that a defendant whom you are considering knew any given fact or facts.

[Footnote continued on following page]

A comparison of the defendants' requests with the charge given by the Court demonstrates that the Court's charge contained every substantive element requested by the defense. First, both stated that a defendant's knowledge need not be proven to an absolute certainty.*

> The element of knowledge of a given fact under this false statement or overvalued security charge may be satisfied by proof that a defendant acted with reckless disregard of what the truth was, unless he actually believed the contrary to be true. One may not deliberately close his eyes to what otherwise would have been obvious to him." (A. 1759-61)

The defendants—who specifically requested a "reckless disregard" charge—asked for the following formulation of this issue:

> "In deciding the question of whether a defendant had actual knowledge of falsity, you may consider as a factor the circumstance that the defendant was aware of a high probability that the statements made were false, fictitious or fraudulent. You may also consider whether the defendant acted with reckless disregard of whether the statements made were false and with a conscious purpose of avoiding the truth. If you find that such was the case, you may infer from those circumstances that the defendant had the knowledge which the offenses charged require and you may convict him of the offenses charged in the Counts I have just enumerated unless you find from all the evidence that the defendant actually believed the statements made were true. In short, a defendant may not be convicted on the Counts charging false statements if he actually believed the statements referred to in these counts were true, no matter how recklessly he may have acted. The fact that the belief was unreasonable or even foolish, is of no consequence if you find that it was held in good faith." (A. 1929).

* The defendants' requests stated that "[i]n deciding the question of whether a defendant had actual knowledge of falsity, you may consider as a factor the circumstance that *the defendant was aware of a high probability that the statements were false, fictitious or fraudulent.*" (A. 1929). (Emphasis added). Judge Pollack stated this same proposition as follows: "However, it is not necessary that the government prove to a certainty that a defendant whom you are considering knew any given fact or facts" (A. 1760-61).

Second, both observed that the jury could consider whether a defendant acted with reckless disregard of whether a statement was false and with an intent to avoid learning the truth.* Finally, both charges contained balancing language to the effect that even if a defendant acted with "reckless disregard" he could not be convicted if he believed that the statements he made were true.**

As can readily be seen by comparing the defendants' requests with the Court's charge, the Court's charge was just as balanced as that requested by the defense and just as clearly warned the jury in unequivocal terms that "negligence and even gross negligence," to quote the defendants, Brief at 34-35, was not sufficient to support a conviction.

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* The defendants' requested language was: "You may also consider whether the defendant acted with reckless disregard of whether the statements made were false and with a conscious purpose of avoiding the truth. (A. 1929). Judge Pollack charged as follows: "The element of knowledge of a given fact . . . may be satisfied by proof that a defendant acted with reckless disregard of what the truth was. . . . One may not deliberately close his eyes to what otherwise would have been obvious to him." (A. 1761). Judge Pollack also stated that knowledge might be *inferred* from activity of this nature. (A. 1762).

** The defendants requested that the Court charge that a defendant might be convicted if he acted with reckless disregard and with a purpose to avoid learning the truth "unless you find from all the evidence that the defendant actually believed the statements made were true." (A. 1929). The Court charged that a defendant could not be convicted of making a false statement if "he actually believed the contrary to be true." (A. 1761). Moreover, Judge Pollack had earlier cautioned the jury that "Guilty knowledge cannot be established by demonstrating inadvertence, carelessness or other innocent reason on the part of the defendant," A. 1760, and later instructed the jury "that honesty and good faith on the part of a defendant is a good defense on all the charges in this case." (A. 1844).

The bulk of appellants' contentions spring from little more than juxtaposing language from the charge misleadingly and out of context,* or ignoring pertinent portions of the instructions completely. Thus, despite their claim that the charge was fatally unbalanced, nowhere in appellants' arguments is there any reference to Judge Pollack's supplemental instructions "that honesty and good faith on the part of a defendant is a good defense on all the charges in this case." (A. 1844). The applelants' omission of that language may be explainable by the fact that virtually identical instructions were held in both *United States* v. *Gentile*, *supra*, 530 F.2d at 469-470 and *United States* v. *Natelli*, 527 F.2d 311, 322-323 (2d Cir. 1975), *cert. denied*, 44 U.S.L.W. 3592 (April 19, 1976), to be grounds for rejection of the same contentions that are made in this case.

Similarly, appellants' assertions that the Court's instructions permitted the jury to conclude that "proof of

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* A glaring example of quoting out of context may be found on page 33 of appellants' Brief, wherein they state:

> "Moreover, having charged that knowledge was a required element (paras. 1-6), the court concluded its generic charge by stating that 'it is not necessary that the Government prove to a certainty that a defendant . . . knew any given fact or facts' (para. 6), and immediately told the jury that the 'element of knowledge of a given fact' may be satisfied by proof 'that a defendant acted with reckless disregard of what the truth was . . .' (para. 7).
>
> The juxtaposition of these words clearly conveyed a lesser and alternative standard of criminal responsibility. The thrust of the instruction became (a) that knowledge must be proved, (b) that it need not be proved 'to a certainty,' and (c) that proof of a reckless disregard would suffice to convict."

What appellants conveniently ignore, however, is that immediately after the language they quote at the end of the first paragraph, the Court charged *"unless he actually believed the contrary to be true."* In their brief appellants chose to substitute an ellipsis for the balancing language used by the Court.

a reckless disregard would suffice to convict", Brief at 33, and that "the court told the jury that a finding of recklessness was a substitute for actual knowledge", although "this Court consistently has held that recklessness is only a means whereby *actual* knowledge may be inferred", Brief at 34 (emphasis in original), simply disregard other portions of the charge. In particular, Judge Pollack early in the charge gave clear instructions that on the element of knowledge, "[t]he government must establish beyond a reasonable doubt that the defendants . . . knew the statement or report to be false or the security overvalued," (A. 1759), and concluded with the statement that if the jury found that "a defendant . . . act[ed] in reckless disregard of whether or not a given set of facts were false . . . you may, if you wish, infer that he had knowledge of the false nature of such facts." (A. 1762). Finally, their last contention that the charge permitted the jury to convict "if they found the defendants were careless", Brief at 34, is directly refuted by the specific instruction that "[g]uilty knowledge cannot be established by demonstrating inadvertance, carelessness or other innocent reason on the part of the defendant." (A. 1760; emphasis supplied).*

Where appellants cannot ignore the language of the charge, they disregard the decisions of this Court. Thus, contrary to the impression created by appellants' repeated citation of this Court's recent opinion in *United States* v. *Gentile*, *supra*, the charge in this case was actually more beneficial to the defendants than the charge approved in *Gentile* since Judge Pollack included balancing language, omitted in *Gentile*, requiring an acquittal if the jury found that a defendant believed in the truth-

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* This contention is also refuted by the supplemental instruction that honesty and good faith were a complete defense.

fulness of his false statement (A. 1761). This fact was not mentioned in appellants' brief.*

Similarly, appellants' insistence that the charge given should have been "the balanced instruction of recklessness which the defense requested, which included the approved 'awareness of high probability' language," (Brief at 33), disregards the law. The "balancing" language of the Model Penal Code discussion of guilty knowledge to which appellants refer is not the "awareness of high probability" language but rather the later language of the same section, "unless he actually believes that it does not exist," *United States* v. *Bright*, 517 F.2d 584, 587-88 (2d Cir. 1975), which as noted above, was appropriately adapted by Judge Pollack here and included in his instructions (A. 1761).** The suggestion that the " 'awareness of a high probability' language" was preferable to the reckless disregard and "deliberately clos[ing] his eyes" formulation Judge Pollack used was flatly rejected by *United States* v. *Jacobs*, 475 F.2d 270, 287-88 (2d Cir.), *cert. denied sub nom. Thaler* v. *United States*, 414 U.S. 821 (1973).

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* Indeed, in *Gentile* this Court held that the absence of that language, while assigned as reversible error on appeal, was insignificant because of the inclusion in the charge of general language on knowledge and intent, which were also part of Judge Pollack's instructions. (A. 1761). In this case, the appellants seek to avoid the force of this language by dismissing it as boilerplate. Brief at 32-33.

** Insofar as appellants seek the benefits of the suggestion in *Gentile* that "deliberate disregard" is an expression preferable to "reckless disregard", they are foreclosed by their use of "reckless disregard" in their own requests to charge despite the fact that the *Gentile* opinion was filed four months before the trial in this case. In any event, as *Gentile* pointed out in this context, "no particular word or words determine the adequacy of the charge" . . . 530 F.2d at 470.

In short, far from being an unfair or misleading charge on guilty knowledge and the place of reckless disregard in inferring it, Judge Pollack's charge was properly balance and entirely consistent with the charge approved in such recent cases as *United States* v. *Natelli*, *supra*.*

The deficiencies found to warrant a new trial in *United States* v. *Bright*, *supra*, the only case cited by

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* Indeed, Judge Pollack's charge was more favorable to the appellants than the charge in *Natelli*, which was as follows:

> "While I have stated that negligence or mistake do not constitute guilty knowledge or intent, nevertheless, ladies and gentlemen, you are entitled to consider in determining whether a defendant acted with such intent if he deliberately closed his eyes to the obvious or to the facts that certainly would be observed or ascertained in the course of his accounting work or whether he recklessly stated as facts matters of which he knew he was ignorant.
>
> If you find such reckless deliberate indifference to or disregard for truth or falsity on the part of a given defendant, the law entitles you to infer therefrom that that defendant wilfully and knowingly filed or caused to be filed false financial information of a material nature with the SEC.
>
> But such an inference, of course, must depend upon the weight and credibility extended to the evidence of reckless and indifference, conduct, if any.
>
> I repeat: Ordinary or simple negligence or mistake alone would be insufficient to support a finding of guilty knowledge or wilfulness or intent." 527 F.2d at 322 n.9.

However, Judge Pollack's charge, unlike the *Natelli* charge, included both balancing language to the effect that a belief in the truth of a representation would prevent a conviction even if a defendant acted in reckless disregard of the truth and language to the effect that honesty and good faith were a complete defense to all charges. Consequently, the jury was clearly warned in a manner which was, if anything, more favorable than *Natelli* that "[g]uilty knowledge cannot be established by demonstrating inadvertence, carelessness or other innocent reason on the part of the defendants." (A. 1760). *United States* v. *Natelli*, *supra*, 527 F.2d at 322 n.9.

appellants in which there was a reversal because of the charge, are wholly absent here. Judge Pollack specifically instructed the jury that good faith and honesty were a defense to every charge in the indictment and that a defendant could not be convicted of a knowing false statement if he actually believed that his statement was true.*

After giving his general charge on knowledge, Judge Pollack stated certain factual circumstances from which the jury could, in the context of the evidence presented, infer knowledge.** In criticizing the appropriateness of

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* Judge Pollack's instruction on honesty and good faith, made in response to a defense request, was the very last substantive statement made by the Court prior to the time the jury retired to begin its deliberations.

** Judge Pollack stated:

> "How does one go about determining whether a defendant knew that a given fact contained on a statement to a bank was false or that the value of certain security such as a vessel was overstated? This is a matter which may be inferred from other facts. Thus, if an individual was involved in loans on the same vessel at two different banks and factual representations were made in connection with the second loan which were inconsistent with the representations made in connection with the first loan and the representations made in connection with the second loan were established to have been false, you might infer that such an individual had knowledge of the false nature of the second representation or acted in reckless disregard of whether such representation was false.
>
> You may infer, if you feel such an inference to be justified, that by not attempting to resolve an inconsistency of this nature, at the very least an individual had acted in reckless disregard of whether or not a given fact was false.
>
> Similarly, you may infer from a person's involvement with a particular vessel, a particular charter or the particular transaction, that he had knowledge with relation to that vessel charter or transaction.

[Footnote continued on following page]

these inferences, the appellants ignore the evidentiary context in which they were suggested as well as the Court's earlier instructions that circumstantial evidence could be used to infer knowledge. The inferences stated by Judge Pollack as permissible were strongly supported by the evidence at trial. As Judge Hough recognized:

> "[W]hile there is no allowable inference of knowledge from the mere fact of falsity, there are many cases where from the actor's special situation and continuity of conduct an inference that he *did* know the untruth of what he said or wrote may legitimately be drawn." *Bentel* v. *United States*, 13 F.2d 327, 329 (2d Cir.), *cert. denied*, *sub nom. Amos* v. *United States*, 273 U.S. 713, 47 S. Ct. 109, 71 L.Ed. 854 (1926) (emphasis in original).

See United States v. *Frank*, 494 F.2d 145, 152-53 (2d Cir.), *cert. denied*, 419 U.S. 828 (1974); *United States*

With respect to Costas Naslas or Paul Katritsis, the government contended they had taken part or had knowledge of certain improprieties while employed at Tidal Marine. If you find this to have been the case, when Naslas or Katritsis signed documents which contained these statements of fact you may infer, if you choose, that such misstatements either were done knowingly and deliberately or that Naslas and/or Katritsis acted with reckless disregard or reckless indifference as to whether such representations were false.

In the case of any particular situation you may ask yourselves did a defendant, because of his prior experience and his knowledge, act in reckless disregard of whether or not a given set of facts were false? If you conclude that he did, you may, if you wish, infer that he had knowledge of the false nature of such facts." (A. 1761-62).

It should be noted that while paragraphs in the Judge's charge are numbered in appellants' brief, the charge as given contained no such division.

v. *Sarantos*, 455 F.2d 877, 880-81 (2d Cir. 1972); *United States* v. *Simon*, 425 F.2d 796 (2d Cir. 1969), *cert. denied*, 397 U.S. 1006 (1970); *United States* v. *Benjamin*, 328 F.2d 854, 861-62 (2d Cir.), *cert. denied, sub nom. Howard* v. *United States*, 377 U.S. 953 (1964); *United States* v. *White*, 124 F.2d 181, 185 (2d Cir. 1941). Judge Pollack simply pointed out for the jury's consideration the "special situation and continuity of conduct" of the defendants in this case. As such, the Court was merely restating Judge Hough's maxim in greater detail and in a manner appropriate to the circumstances of this case.*

Appellants' contention that knowledge may not justifiably be inferred from the mere fact that a defendant participated in two separate loan closings where inconsistent representations were made, Brief at 33, ignores the plain fact that the evidence at trial demonstrated much more than mere presence at different closings on the part of the appellants.** In addition to participating in the representation of facts that NBNA relied upon in making loans aggregating several million dollars, Hanlon and Naslas played key roles in the affairs of Tidal Marine

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* It is settled law in this Circuit that a District Court judge may comment in a fair way upon the evidence. *See United States* v. *Tramunti*, 513 F.2d 1087, 1119-20 (2d Cir.), *cert. denied*, 423 U.S. 832 (1975); *United States* v. *DeLaMotte*, 434 F.2d 289, 291-92 (2d Cir. 1970), *cert. denied*, 401 U.S. 921 (1971); *United States* v. *Tourine*, 428 F.2d 865, 869 (2d Cir. 1970), *cert. denied sub nom. Burtman* v. *United States*, 400 U.S. 1020 (1971); *United States* v. *Kahaner*, 317 F.2d 459, 479 (2d Cir.), *cert. denied*, 375 U.S. 836 (1963).

** Only Hanlon and Naslas were convicted on counts based on transactions in which a defendant participated in two separate closings on the same ship. Thus, this inference is applicable only to them.

over a long period of time.* Moreover, both Hanlon and Naslas were convicted on several counts to which the inference as to two separate loan closings had no applicability.**

Appellants' objection to Judge Pollack's remark that knowledge might be inferred from the fact that Naslas or Katritsis had knowledge of certain improprieties at Tidal Marine, Brief at 34, both misstates the Court's remarks and ignores the evidence in this case. First, as to the statement itself, Judge Pollack's instruction was that knowledge might be inferred if the jury found that Naslas or Katritsis had taken part in or had knowledge of improprieties at Tidal Marine. Second, in the context of the trial the term improprieties was not

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* This Court has recognized that many times a series of acts —none of which by itself would show guilty knowledge—may be viewed in the aggregate to establish this element of an offense. Judge Learned Hand expressed this principle in *United States* v. *White*, *supra*, 124 F.2d at 185, as follows:

> "It is true that all these instances, taken singly, do not prove beyond question that White knew that the statements which he prepared were padded with false entries: but logically the sum is often greater than the aggregate of the parts, and the cumulation of instances, each explicable only by extreme credulity or professional inexpertness, may have a probative force immensely greater than any one of them alone."

The details of the facts underlying Hanlon's and Naslas' guilty knowledge, including their extended contacts with the operations of Tidal Marine over a period of years, are discussed in the Statement of Facts and that portion of the brief dealing with the sufficiency of the evidence, and need not be reviewed once again here.

** These transactions were, as to Hanlon, the six dry cargo loan, Count 36, and the Tagma loan, Counts 75 and 76, and as to Naslas, the Aris loan, Counts 62 and 63, the Tachys loan, Counts 65 and 66, the Tagma loan, Count 76, and the bribery transactions, Counts One, Three, and Four of the information.

"vague", as appellants' contend, but instead related to direct evidence introduced against each defendant. With respect to Naslas, evidence was introduced indicating that he had participated in the scheme to pay bribes to bankers at NBNA and had actually made two of the payoffs. As to Katritsis, there was evidence presented that he (1) aided in the back dating of a certificate falsely attesting to the validity of the Tachys charter,* (2) retyped Tidal Marine financial statements to show a more favorable financial condition in preparation for a meeting with bankers and (3) had acted as a front for Amanatides in obtaining bank loans. Therefore, in the context of the evidence, the trial judge's references were clear and constituted what the jury may have inferred were danger signals and red flags pointing the way towards knowledge. *See United States* v. *Frank*, *supra*, 494 F.2d at 152-53; *United States* v. *Simon*, *supra*; *United States* v. *Benjamin*, *supra*, 328 F.2d at 861; *United States* v. *White*, *supra*, 124 F.2d at 185.**

The appellants' contention that the Court erroneously employed the phrases "reckless indifference", "reckless disregard" and "knowledge" while presenting the foregoing inferences to the jury is likewise without merit. Their claim that the effect of this was to tell "the jury that a finding of recklessness was a substitute for actual knowledge", Brief at 34, completely ignores the fact that the trial judge had just finished giving a full and balanced definition of these concepts and was at that time merely referring to these definitions in a shorthand manner. *Cf. United States* v. *Park*, 421 U.S. 658, 674 (1975);

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* Katritsis was convicted of both conspiracy and making false statements in connection with the Tachys transaction as charged in Counts 65 and 66.

** In addition, of course, Judge Pollack instructed the jury at length that it was their sole province to determine the facts and draw inferences in the case. (A. 1743-44).

Cupp v. *Naughten*, 414 U.S. 141, 146-47 (1973); *United States* v. *Santiago*, 528 F.2d 1130, 1135 (2d Cir), *cert. denied*, 44 U.S.L.W. 3659 (May 19, 1976); *United States* v. *Wells*, 506 F.2d 924 (5th Cir. 1975); *United States* v. *Bickford*, 445 F.2d 829, 830 (1st Cir. 1971); *United States* v. *Barash*, 412 F.2d 26, 33 (2d Cir.), *cert. denied*, 396 U.S. 832 (1969); *United States* v. *Schiller*, 187 F.2d 572, 574 (2d Cir. 1951).

Viewing the Court's charge in its entirety, *United States* v. *Bright*, *supra*; *United States* v. *Gentile*, *supra*, 530 F.2d at 469, it is clear that it was both consistent with the charge requested by the defense and proper under prior decisions of this Court. The appellants secured the benefits of both proper balancing language and an instruction that honesty and good faith were a complete defense. The jury by its verdict obviously decided that the appellants did have the requisite guilty knowledge and were not motivated by honesty and good faith.

Appellants correctly state that guilty knowledge was the principal issue in this trial. Brief at 34. That issue was decided against the appellants on the basis of a fair and balanced charge that completely informed the jury of the proper considerations and the requisite standards in deciding this question. Consequently, this point on appeal has no merit.

POINT III

The Government's summation contained no improper arguments.

Appellants contend that their convictions should be reversed because the prosecutor's summation "called for speculation," "invited a verdict based upon negligence" * and stated as true facts that the prosecutor knew to be untrue. Brief at 35. These contentions are frivolous.**

A. Alleged Speculation

Appellants complain that the prosecutor's summation "called for speculation to an impermissible degree."

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* This contention is somewhat surprising in light of the fact that in the previous section of their brief appellants stated that "the prosecution throughout the trial and in its summation argued that the defendants had actual knowledge." Brief at 29.

** They are also remarkable in light of the flagrant and repeated misstatements of the record contained in defense counsel's summation. *Cf. United States* v. *DeAngelis*, 490 F.2d 1004, 1010-12 (concurring opinion) (2d Cir.), *cert. denied*, 416 U.S. 956 (1974). A few examples follow:

Defense counsel argued that Bustard's statement that the purchase price of the Trechon was represented as being $5,500,000 was uncorroborated by anything in the loan file. (A. 1623-1624). This statement was false. (See GXS 280, 281). It was particularly inexcusable in light of the fact that defense counsel had made the same charge in connection with introduction of a Government chart earlier in the trial, and his mistake had been pointed out to him. (A. 815-818).

Defense counsel also claimed that "[t]here is not a speck of evidence in this case" that Naslas was told of NBNA's decision not to loan any more money to Tidal Marine. (A. 1625). This statement was once again false (See A. 926-927).

Defense counsel contended that Joseph Peter Flemming never informed Hanlon of his discovery that there was no Tama charter. This statement is also false. Hanlon participated in negotiations to find a ship to replace the Tama as security for the loan. (A. 416).

Brief at 35. Even a cursory perusal of those portions * of the summation cited by appellants, however, reveals that the prosecutor was merely arguing inferences that were fully supported and in most cases compelled by the evidence. It would doubtless be to the benefit of defendants such as these in a case such as this if the prosecutor were prohibited from discussing the inferences logically to be drawn from the evidence. Such a desire, however, is without support either in common sense or the law. *United States* v. *DiBrizzi*, 393 F.2d 642, 646 (2d Cir. 1968); *United States* v. *Morell*, 524 F.2d 550, 557 (2d Cir. 1975); *United States* v. *Wilner*, 523 F.2d 68, 73 (2d Cir. 1975); *United States* v. *White*, 486 F.2d 204, 207 (2d Cir. 1973), *cert. denied*, 415 U.S. 980 (1974). The prosecutor's summation, read either in part or whole, was an attempt to calmly explain the evidence to the jury as logically and clearly as possible. This is substantiated by even a brief examination of the remarks to which exception is taken.**

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* Many of these remarks are totally removed from the relevant context in which they were made. Moreover, although defense counsel voiced a number of objections during and after the summation, no specific objection was made to many of the remarks now claimed to have been so prejudicial. *United States* v. *Caniff*, 521 F.2d 565, 571-72 (2d Cir. 1975), *cert. denied sub nom. Benigno* v. *United States*, 423 U.S. 1059 (1976); *United States* v. *Socony-Vacuum Oil Corp.*, 310 U.S. 150, 238-39 (1940).

** Even if, as appellants assert, the prosecutor's arguments consisted of speculation unsupported by logic, it is difficult to understand how they would suffer any prejudice, since the jury was fully aware of and capable of exercising its prerogative to reject irrational arguments. As Judge Pollack instructed the jury

> "The evidence and the evidence alone is to be your guide. It is for you to determine the weight that will be given to the evidence, the credibility that you will extend to the witnesses who testified, and the reasonable inferences that are to be drawn from the evidence that has been received." (A. 1743).
>
> "The function of believing or disbelieving testimony or exhibits and of accepting or rejecting inferences to be drawn from evidence lies squarely within your province.

[Footnote continued on following page]

1. The Trechon Loan *

Hanlon claims the following remarks were unsupported by the evidence:

> "In the first place, as Mr. Hanlon well knew, no bank would loan an amount of money in excess of the amount or even close to the amount that the seller had just finished selling the ship for, and the reason for this is obvious: that is the price for which the seller is willing to part with the ship is a good indicator of what its value is." (A. 1557).

Of course, the line of credit agreement, pursuant to which BOA made the Trechon loan, provided that loan amounts would not exceed 75% of the ship's purchase price. Moreover, in every instance concerning which there was evidence in this case, the amount loaned was less than the purchase price of the ship as represented to the bank. The prosecutor was fully justified in arguing that common sense must have told Hanlon that BOA would not loan $4,000,000 on a ship which was being contemporaneously purchased for $3,385,000.

Hanlon also claims that the following remarks constituted improper speculation:

> "And, I think you can be quite sure that that letter from the Bank of America's attorneys did not come out of the blue; that the bank had very

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The Court holds no opinion as to the validity of any contention made by the defendants or by the government." (A. 1744)

Furthermore, since substantially all of the inferential arguments of which appellants complain were made during the course of the prosecutor's direct summation, defense counsel had a full opportunity to point out to the jury any logical flaws that he believed they contained.

* No specific objection was made at trial concerning the remarks about which Hanlon now complains.

> good reason to write to Mr. Hanlon concerning this line of credit agreement and that as Tidal Marine's attorney, James Hanlon was fully familiar with the existence and at least the basic terms of the line of credit agreement with Bank of America, and he knew very well that the bank would not loan $4,000,000 if it exceeded 75 percent of the purchase price of the ship." (A. 1559).
>
> "The question you have to ask yourselves is whether this letter to Mr. Hanlon, Tidal Marine's attorney, came just out of the blue, that Mr. Hanlon representing Tidal Marine in connection with the loan made pursuant to a contract, to a line of credit agreement, didn't know exactly what that line of credit agreement provided." (A. 1700).

These remarks were made during discussions of the evidence supporting the Government's contention that Hanlon was aware of the misrepresentation to BOA as to the Trechon's purchase price. One of the prosecutor's arguments was that Hanlon must have been aware of the line of credit agreement which restricted loan amunts to 75% of purchase price. In support of this inference, the prosecutor referred to, among other considerations, Hanlon's heavy involvement in Tidal Marine's affairs, his representation of Tidal Marine in connection with the loan, his receipt of $325,000 of the loan proceeds and his receipt of a letter dated January 4, 1971, from BOA's attorneys, enclosing a copy of the draft line of credit loan agreement (GXS 299A, 284). In reference to the last item, the Government merely stated the obvious—that both the text of the letter and the circumstances under which it was sent indicated that this was not the

first time Hanlon heard of the line of credit agreement (A. 1554-1559, 1698-1702).*

2. The ION Loans

Hanlon claims that the following remarks of the prosecutor called for improper speculation:

> "I think the question you have to ask yourself is whether it is possible—is it conceivable that Mr. Hanlon did not know what the purchase price of these ships was when that was exactly what this loan was about.
>
> "Also ask yourselves whether in light of the fact that Mr. Hanlon dealt with the bank's lawyers every day, whether it is possible, whether it is conceivable that he did not know what the bank thought the purchase price was." (A. 1562).

Hanlon contends that there was no evidence to support the inference that Hanlon was aware of the misrepresentation to the bank concerning the purchase price of these ships. This conclusion, however, was virtually compelled by the fact that Hanlon spent close to 100 hours working on these loan transactions, attended the loan closings, formed a Liberian shell corporation in the same

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* Hanlon also complains of the prosecutor's statement that Tidal Marine asked for a $4,000,000 loan to purchase a ship for $3,385,000 because $325,000 was needed "to pay off James Hanlon for his services in perpetrating fraud in connection with this loan . . ." (A. 1555-56). He argues that this was improper because "there was no evidence that Hanlon served to perpetrate fraud on the Trechon loan." Brief at 37. Unfortunately, for Hanlon, however, the evidence overwhelmingly established that he closed the loan for Tidal Marine with full knowledge that it was predicated upon fraudulent representations. See pages 52-55, *supra*.

name as the selling corporation prior to the loan closing and committed other fraudulent acts in connection with these loans. (A. 1559-1568). See pages 55-56, *supra*.

Hanlon also objects to the following remarks:

> "Now, ask yourselves what did Mr. Hanlon think when he discovered that it was being represented to the bank that one of these ships was on a charter to Unimar?
>
> He tells you that although he spent over 100 hours in this transaction, he did not think at all. Well, I will say one thing. Mr. Hanlon surely did not think that the ship was on charter to the Unimar Seetransport Corporation which he had just formed for Tidal Marine two months earlier.
>
> MR. FLEMING:* I object to that statement.
>
> THE COURT: The objection is overruled.
>
> MR. GLEKEL: The fact is, and I think it is clear from the evidence, that Mr. Hanlon was well aware that the ship was not on charter to Unimar at all and, again, this Liberian shell corporation was formed for one and only one purpose, and that is to further the fraud." (A. 1564-1565).

Hanlon's contention seems to be that there was no evidence to support the argument that Hanlon was aware that the Ilion was not on charter to Unimar Seetransport GMBH. In addition to Hanlon's extensive participation on behalf of Tidal Marine in this loan transaction, however, Hanlon formed a dummy Liberian corporation in 1971 prior to the closing of this loan in the same name as the company purportedly chartering the Ilion. Hanlon, in the course of his testimony, was not able to offer any legitimate reason for forming this shell corporation. The

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* This was Peter Fleming, Jr., Esq., counsel for the defendants, not Joseph Peter Flemming, the witness.

inference is inescapable that this corporation was formed to provide assistance, if required, in deceiving NBNA. Moreover, as the prosecutor noted in remarks that immediately follow those to which Hanlon objects:

> "Remember also that this wasn't Mr. Hanlon's first contact with Unimar Seetransport, GMBH.
>
> You recall Mr. Hanlon also represented Tidal Marine in connection with a closing on a ship by the name of the Triena, a closing which occurred in September of 1970. This ship was also supposedly under charter to Unimar.
>
> You have also heard evidence that it was not on any such charter.
>
> Now interestingly enough, Mr. Hanlon formed the Liberian shell corporation by the name of Unimar just a few weeks after the Triena closing, and again I think you have to ask yourselves just what did Mr. Hanlon think he was doing when he formed the Unimar Corporation." (A. 1565-1566).

3. The Six Dry Cargo Loan

Hanlon argues that the following remarks constituted unwarranted speculation:

> "Well, ladies and gentlemen, it is rather curious that Mel Tublin, the bank's attorney, thought that Scufalos was the borower. The Loan Committee thought Scufalos was the borrower. The loan officers of the Ship Loan Department thought Scufalos was the borrower and only James Hanlon, only the attorney representing the borrower, was kept in the dark as to the purported purpose of this loan.

Indeed, Mark Scufalos actually guaranteed the loan and no one from Tidal Marine was even at the closing.

The fact is, that Mr. Hanlon billed $9,000, that is 90 hours, for work performed in connection with the closing of this loan.

He signed the loan agreement. He had discussions with bank attorneys in connection with this loan.

Is there really any possibility at all that in all this time Mr. Hanlon did not become aware that the bank was treating this loan as a Scufalos transaction?

Indeed, I think if you really think about this transaction, the six dry cargo loan, it is inconceivable that Harry Amanatides did not fully inform James Hanlon of the fraud he was perpetrating.

MR. FLEMING: I object to that, your Honor.

THE COURT: I think this is argument on the part of the government and the government is entitled to draw its inferences from the evidence and argue them, and you are entitled to draw your inferences and argue them.

Your objection is overruled.

MR. GLEKEL: The point, ladies and gentlemen, is a very simple one:

If Harry Amanatides had not fully informed James Hanlon of the fraud that was being perpetrated, it would have been absolutely inevitable that Mr. Hanlon would have disclosed to the bank's attorneys either deliberately or accidentally that he

thought he was representing Tidal Marine in connection with this loan and that Tidal Marine was the real borrower.

Of course, such a disclosure would have destroyed the entire scheme and the entire fraud would have collapsed right at the start. It was essential, of course, to this scheme, that Mr. Hanlon appeared to be Mr. Scufalos' attorney in this loan transaction. Mr. Amanatides could not take the risk that Mr. Hanlon, as I say either deliberately or inadvertently, might have disclosed the fact he thought that he was representing Tidal Marine.

Neither could Amanatides take the risk that Mr. Hanlon, if he had not already been corrupted, would find out that the bank viewed the loan as a Scufalos transaction, and have blown the whistle on the whole affair.

I think you can see that the fact is that Mr. Hanlon knew exactly what was going on in connection with the fraud that was being committed." (A. 1570-1572).

"Again ask yourselves if Mr. Hanlon did not know of this fraud, how could Mr. Amanatides allow, allow him, Mr. Hanlon, to go into that bank thinking he was Tidal Marine's attorney when the bank thought he was representing Scufalos without risking the whole fraud being uncovered?" (A. 1704-1705).

These remarks were made during the course of the prosecutor's summary of the various strands of evidence that indicated Hanlon knew that Scufalos was represented to NBNA as being the borrower in this transaction. (A. 1568-1572). The challenged portion of this discussion merely states the obvious: it is inconceivable that Han-

lon, who represented the borrower, could have thought that Tidal Marine was the borrower and that the bank thought that Scufalos was the borrower without one side discovering that the other was under a misapprehension, and that Amanatides could not take the risk that NBNA would have discovered that Hanlon thought Tidal Marine was the borrower. See pages 57-59, *supra*.

4. The Tropis and Tekton Loan *

Katritsis claims that it was improper to ask the jury to consider, in determining his guilt on the Tropis and Tekton charges, the fact that he had signed the fraudulent charters submitted to NBNA as security for the six dry cargo loan. Although Katritsis was not indicted in connection with these actions, the evidence developed at trial suggested that he was far from an innocent signatory. In any event, the Government was entitled to argue that an inference as to Katritsis' guilty knowledge of misrepresentations made in connection with the Tropis and Tekton loan could be drawn from Katritsis' repeated participation in the making of other misrepresentations. *United States* v. *Simon*, *supra*. 425 F.2d at 809.

5. The Aris Loan **

Naslas contends that the following remarks called for speculation:

> "Secondly, you have to keep in mind that Mr. Naslas operated the ships. The charter was the most important aspect of their operation. The charters on the ships was the most important aspect of Tidal Marine.

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* No specific objection was made at trial concerning the remarks about which Katritsis now complains.

** No specific objection was made at trial concerning the remarks about which Naslas now complains.

I submit to you that it's inconceivable that Mr. Naslas would not have been interested in the most essential term, that is the length of the charter Tidal Marine was entering into, and that Harry Amanatides would not have discussed this new five-year charter, something that must have been of considerable value to Tidal Marine, given the depressed market.

I suggest to you it is inconceivable that that was not discussed with Mr. Naslas and he was not fully aware of the five-year charter, the forged five-year charter that they had been representing was entered into." (A. 1595-1596).

Conveniently, Naslas failed to quote the remarks made by the prosecutor immediately preceding those to which objection is made:

"The facts about this one are really very simple. Costas Naslas signed the real three-year charter party, the one which was for three-years, only six week earlier before he made the false and fraudulent representation. He signed it in London, which is also the place where the forgery occurred, where the forged five-year charter party was made.

Mr. Naslas says since he only signed as a witness to Harry Amanatides' signature, he did not look at what he was signing.

Once again I submit to you that Mr. Naslas' story, his testimony at this point, defies belief.

First of all, if he only was shown the bottom part of the last page, the signature line or the witness line of this document when he signed it, how in the world does he know that he was signing the Aris charter?" (A. 1595).

Naslas complains that there was no evidence that Naslas was in charge of the operation of the Aris. What the prosecutor said, however, was that "Mr. Naslas operated the ships. . . ." (A. 1595). The documentary and testimonial evidence at trial clearly established that Naslas participated in the operation of Tidal Marine ships. (A. 796-802, 1175-1177). Indeed, the evidence also suggested that, at the very least, Naslas was familiar with the operation of the Aris. (GX 803). Naslas also asserts that it was improper for the prosecutor to ask the jury to infer that Amanatides discussed with Naslas the fact that it was being represented to NBNA that the Aris was on a five-year charter. It was Naslas, however, who claimed that he signed as a witness to the authentic three-year charter at Amanatides' request, and, more generally, that he was merely following Amanatides' instructions in performing a number of actions which served to facilitate fraud. (A. 1229-1231, 1212-1213). In addition, Naslas represented to NBNA that the Aris was on the forged five year charter. The Government was entitled to argue that Naslas did not act without some discussion with Amanatides concerning the Aris charter.

6. Shevlin's Credibility

Naslas objects to the remarks made by the prosecutor during the course of his rebuttal summation concerning the credibility of John Shevlin. The prosecutor's discussion of this subject is set forth in full, with the portions objected to enclosed in brackets:

> "Now, Mr. Fleming, has also had a lot to say about credibility, about the credibility of Mr. Shevlin. I suggest to you that the testimony you heard from John Shevlin unlike the testimony you heard from Costas Naslas, made sense and was

consistent in all material respects. In any respect, where he may have forgotten something or there may be inconsistencies, they are minor, insignificant, not the types of things a man would lie about and have absolutely nothing to do with the guilty or innocence of Mr. Naslas in this case.

[Moreover, I think you should realize, must realize, that the only interest Mr. Shevlin had in testifying from that witness stand was in telling the truth. He certainly had no interest in incriminating and implicating Mr. Naslas.

As you heard, he is presently awaiting sentence and you can be sure he does not expect the sentencing judge, Judge Pollack, to reward him for perjured testimony.] (A. 1688)

The prosecutor's argument was fully supported by the record. It was Shevlin's understanding that the Government's representations to accept his pleas of guilty to two counts in satisfaction of his involvement in the Tidal Marine fraud and to bring his cooperation to the attention of the sentencing judge were contingent upon his truthful testimony at trial. (A. 958-959). Upon this foundation, the prosecutor properly argued that Shevlin's interest was not in falsely incriminating someone, but in telling the truth. As this Court has recently noted, such remarks are perfectly proper. *United States* v. *Araujo*, — F.2d —, Dkt. No. 76-1085, slip op. 5101, 5104 (2d Cir., July 26, 1976); see also *United States* v. *Aloi*, 511 F.2d 585, 597-98 (2d Cir.), *cert. denied*, 423 U.S. 1015 (1975); *United States* v. *Koss*, 506 F.2d 1103, 1112-13 (2d Cir. 1974), *cert. denied*, 421 U.S. 911 (1975); *United States* v. *Isaacs*, 493 F.2d 1124, 1164-65 (7th Cir.), *cert. denied*, 417 U.S. 976 (1974).

7. Miscellaneous

Appellants finally cite several other statements by the prosecutor that they claim to be improper. Brief at 42. They do not, however, perhaps for the obvious reason, offer any explanation of what the alleged impropriety consists. When the challenged remarks are read within the context they were made, it is apparent that they are fully supported by the evidence and well within the limits of fair argument. Moreover, they were not objected to at the time they were made.

B. Alleged Statements of Facts Known to be False

1. The Ionic King and Queen Charters

Hanlon's attack upon the prosecutor in regard to this subject is not only devoid of merit but constitutes conduct by his counsel that fails to meet the standards expected of those who practice in the federal courts.

On June 3, 1976, George MacKenzie, the chartering manager of British Petroleum Corporation ("BP") from 1970 until 1972, testified that three five-year BP charters submitted to NBNA as security for Tidal Marine loans were forgeries. He also stated that at the time BP was reducing the period for which it would charter ships and that he did not even have authority to enter into five year charters on behalf of BP. (A. 373-379). Defense counsel chose not to inquire on cross-examination about the facts and circumstances surrounding the chartering of the Ionic King and Queen.

On June 8, 1976, defense counsel made his first attempt to establish that BP "voluntarily" increased the terms of the Ionic King and Queen charters from three years to five during the cross-examination of Markella Delfos. She, however, had no recollection of the chartering arrangements on the vessels. (A. 868).

On June 11, 1976, during redirect examination, Hanlon testified that the BP charters on the Ionic King and Queen were extended in time after negotiations. (A. 1525-1526).

Both sides rested following the conclusion of Hanlon's testimony. Up to this time, no request had been made by defense counsel to the Government or the Court that MacKenzie be recalled, that the Government stipulate to his testimony concerning the Ionic King and Queen or even that the Government undertake an inquiry concerning those two vessels. Instead, defense counsel preferred to wait until June 14, 1976, when immediately prior to the delivery of summations defense counsel asked the Government to stipulate to what he thought would be MacKenzie's testimony concerning the extension of the BP charters. The Government responded that although in other circumstances it would consider such a request, it was unable to comply on such short notice in this case, because, while not familiar with all the circumstances surrounding the extensions of those charters, it believed that they involved irregularities.* Even at this point, no request was made to reopen the case.

The prosecutor did not mention these two ships in his direct summation. Defense counsel, however, during the course of his summation argued as follows:

> "The Tachys. The charge against Naslas on the Tachys is that he signed a guarantee, that letter which said that there was a five-year BP charter. There was not a five-year BP charter. It was a phony, fraudulent charter which Delfos said was prepared in London. Here is the letter: December 29, 1971, to Tidal Marine, care of Harry

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* Of course the extensions of those charters would lose whatever slight probative value they may have had for Hanlon if they involved unusual circumstances. Some evidence of this was provided by the purported addenda to these charters, which *reduced* their rate while extending their terms. See Court's Exhibit 15 at A. 1895-1896.

Amanatides: 'Enclosed please find original charter party on the Tachys for execution.' That's the one Paul signed. It was sent to Blonsky. It was signed over there, Ashford, after hours of practice, sent back, and Naslas is supposed to know.

It's interesting, because they rely upon Pat Martin who says Naslas looked at this letter supposely and blanched or was startled and left the room. Shevlin says Naslas never left the room. He said he handed it to Hanlon, Hanlon handed it to Naslas and that was it. They say Costas Naslas had to know that the five-year BP charter existing on the Tachys was false because he had witnessed the signature on assignment of hire back in connection a year ago which showed a three-year BP charter. And you heard Jim Hanlon's testimony that there were charters before, Ionic King and Ionic Queen. This is the kind of evidence they are asking to find guilt beyond a reasonable doubt upon." (A. 1648)

"The Tachys, the charge against Hanlon, on the Tachys is that he signed a letter, to my recollection, addressed to Panayotopulos, not to the bank, in which he represented there was a five-year BP charter on the Tachys. There was not a five-year BP charter on the Tachys. We have never disputed that. Mr. MacKenzie said he had never seen anything like it in his life, but it was a false charter and Marcello Delfos told you how it had been done.

Their whole argument on Hanlon, no one has come in here and said he knew. What they want you to do, they want you to find Hanlon guilty of fraud because Hanlon had been in a closing back about 9 or 10 months ago by this time in which these vessels had been financed on the Bank of

America. The financing was in London. Hanlon was in New York. Hanlon may have found out at that time that at the time these vessels were scheduled to go on a BP charter in late 1971, but on a three year BP charter. That is the evidence.

If you knew that in May, then you had to know that a five year charter produced by Amanatides must have been false.

Hanlon said, and it's not contradicted, on at least two occasions, the Ionic King, Ionic Queen, same company, BP charter, his recollection was that BP had extended the time of the charter. If he remembered, it wouldn't have meant a darn thing to him. That is the quality of the evidence. I leave it with you." (A. 1657-1655)

"Let me ask you a few questions about Hanlon. You heard him cross-examined on Friday. He was on the stand the whole day. He was cross-examined about three hours, you may recall.

You may have found it a little cute. The line of credit, a draft agreement, January [illegible], a month after the Petrolasa financing. That is their evidence on that. The Tropis and the Tekton, this three year charter business, back in April, May and July, but no mention on this cross-examination of the extension of the charters on the Ionic King and Queen." (A. 1668-1669)

The prosecutor responded during the course of his rebuttal summation:

"Just briefly on the Tropis and the Tekton. It seems that Mr. Fleming's main argument, and perhaps the only argument here, is that somehow Mr. Hanlon thought that in some instances Tidal Marine ships had been extended from three years to five year charters, mentioning the Ionic King and the Ionic Queen.

I suggest to you that the only evidence of that was Mr. Hanlon's rather vague testimony and that the—when the witness, MacKenzie, the employee, the guy in charge of chartering BP tankers was called as a witness and testified from the witness stand, Mr. Fleming never asked him whether the Ionic King and Ionic Queen were ever extended from three to five year charters. He didn't want to put that question to him.

Mr. MacKenzie testified at the time in question, at the time the Tropis and Tekton, Tachys charters were entered into, BP would not enter into any five year charters, that they are not willing to do it.

I suggest in addition Mr. Hanlon was well aware at the time of the Tropis and Tekton re-financings of the absolute impossibility of obtaining five year loans—obtaining a five year charter in a declining shipping market when ships were unemployed, without charters, and charterers were very reluctant to enter into long term charter agreements. (A. 1705-1706)

When defense counsel objected to the prosecutor's remarks at the conclusion of the rebuttal summation, Judge Pollack ruled as follows:

"As a second matter, your references to what you learned outside the courtroom and beyond the evidence by your hearsay discussions with people who did not appear as witnesses and from whom there was no basis in the evidence prior to the time that the case was closed of any matter such as you suggested at about one minute before Mr. Glekel got up to make his summation, that seems to me so self-evidently an improper suggestion on your part, that it needs no further statement.

> The arguments made on the rebuttal, which I followed very closely, were well within the reasonable intendments and inferences of the evidence. (A. 1720).

The prosecutor's restrained remarks were a perfectly proper response to a blatant attempt by defense counsel to ambush the Government.* No explanation is or could be offered by defense counsel as to why no inquiry was made of MacKenzie concerning the fact of and the circumstances surrounding the extension of the Ionic King and Queen charters if Hanlon believed his response would assist his defense. Moreover, although the defense raised the matter of these charters as early as June 8, during the course of cross-examination of a Government witness, there is no explanation as to why no request was made for a stipulation until June 14, immediately prior to summations.

The record compels the conclusion that defense counsel was engaged in a strategic ploy to obtain the favorable inferences to be drawn from the fact that two charters were extended from three years to five years without taking the risk that it might be revealed that this extension was accompanied by or the result of even further irregular conduct, which would not redound to appellants' benefit.**

In sum, all of the statements made by the prosecutor were fully supported by the record. *United States ex rel.*

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* This was a tactic not unknown to the principal defense counsel during the course of this trial as Judge Pollack had occasion to remark. (A. 354).

** In a similar situation, this Court has noted an "aura at gamesmanship" in the failure of defense counsel to adduce available evidence during trial coupled with a claim on summation that such evidence, if shown, would have aided the defense. *United States* v. *Erb.* — F.2d —, Dkt. No. 76-1143, slip op. 49, 60 (2d Cir., October 1, 1976).

Paxos v. *Rundle*, 491 F.2d 447, 452 (3d Cir. 1972) (*en banc*). In addition, the statements now challenged by Hanlon were responsive to direct statements by defense counsel. *United States* v. *Tramunti*, 513 F.2d 1087, 1119 (2d Cir.), *cert. denied*, 423 U.S. 832 (1975); *United States* v. *Nowak*, 448 F.2d 134, 140-141 (7th Cir. 1971), *cert. denied*, 364 U.S. 731 (1972).

2. Naslas' Prior Statement

Naslas contends that the Government improperly suggested in rebuttal summation that his trial testimony concerning $10,000 payments to Metzger and Shevlin was a recent fabrication designed to meet the testimony against him when the Government knew that he had made a similar statement to Assistant United States Attorney John Gordan in October 1975. Brief at 44-45. This contention ignores two relevant facts. First, when the prosecutor's statement is read in the context of Naslas' prior statement, his trial testimony and the other evidence, it is clear that the statement was proper. Second, when this objection was raised after the conclusion of the arguments the defense agreed to a procedure which cured the objection.

Naslas testified at trial that while Amanatides told him that he had paid both Metzger and Shevlin $10,000, Amanatides said that he had been on King and Naslas received no indication in the future from the bank officers that they had been paid. (A. 1205-1206). In an interview with Assistant United States Attorney Gordan, Naslas recounted what had occurred and said that he thought that he had unknowingly made the payments. Court's Exhibit 16 at A. 1897. The statement made to Mr. Gordan in no way concerned the manner in which Naslas had obtained money for the payoffs, and he was confronted for the first time at trial with the evidence concerning checks he had signed bearing the notation that they were

obstensibly to pay cash to the master of the Aquario. However, the Aquario was in the Caribbean at that time, and on other occasions during the same period when the vessel was in the Caribbean Naslas had sent money to the master by way of a wire transfer. See pages 20-21, *supra*. At trial, Naslas' only explanation for signing two checks for the purported purpose of paying cash to the master of a vessel in the Caribbean was that he was a signatory on the account and that he had been asked to do so by Amanatides. (A. 1228-1231). Given the limited nature of Naslas' prior statement and the broader area of inquiry at trial, the Government's argument on this point was fair.

Moreover, after summation, when the defense raised its objection to the Government's argument, the Court adopted a procedure that as even the defense indicated, completely satisfied their objection.* (A. 1726-1732). This procedure was for the Court to read to the jury Mr. Gordan's notes of (1) the October 3, 1975, interview with Naslas containing his allegedly prior consistent statement** and (2) an October 7, 1975, interview with Shevlin. (A. 1734-1738). Nowhere in his arguments does Naslas acknowledge the efforts made by the Court to cure his objection and his agreement with this procedure.***

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* Defense counsel specifically agreed to this procedure (A. 1730) and then limited his mistrial motion to "other statements" made during the rebuttal summation. (A. 1734).

** Naslas had previously been unsuccessful in bringing the statement he made to Mr. Gordan during this interview to the jury's attention because he could not lay a proper foundation for its admission. (A. 1226-1227; Court's Exhibit 14 (¶ 2) at A. 1892).

*** Moreover, Naslas also fails to mention that, at his request, the Court during its charge specifically instructed the jury that it was Naslas' contention that the Government's argument that his

[Footnote continued on following page]

POINT IV

The evidence of bribery was not barred by collateral estoppel. The additional claims of error in the trial of the bribery counts are frivolous.

A. Collateral Estoppel.

Naslas claims that the Government was estopped from eliciting Shevlin's testimony concerning Naslas' participation in the payment of bribes because *Metzger* was acquitted of charges that he had received and conspired to

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trial testimony was a recent fabrication was incorrect and that he contended that he had given his version of the incident to the prosecution prior to the time that Shevlin ever accused him of wrongdoing and that Shevlin's decision to cooperate did not come until after Naslas had made his statement. (A. 1821-1824, 1899-1900). The point behind Naslas' latter contention is both obvious and clearly erroneous. By pointing out that Naslas had given his statement prior to the time that Shevlin met with the prosecutors, the defense was seeking to infer that the substance of Naslas' statement had been brought to Shevlin's attention and that he tailored his version of the facts accordingly. (A. 1892). Shevlin testified that Mr. Gordan had not told him that Naslas had been in to see him and that Gordan had not mentioned Naslas at all. (A. 1051-1052). The defense attempt to have Naslas' statement introduced at trial was not successful. Since the defense declined to call Mr. Gordan as a witness, there was nothing in the record from which it could argue that Shevlin had been told about Naslas' statement. Obviously, the defense was attempting to suggest to the jury that either by inadvertence or design the Government had told Shevlin about Naslas' statement and was concealing this fact at trial. Such an inference was completely unfounded. The defense was thus allowed to place on the record for the jury's consideration a contention that could not be supported by the evidence adduced at trial. Since Naslas was able to secure a completely improper trial advantage as a result of the curative actions taken by the Court, he can hardly claim prejudice on appeal.

receive the bribe payments in a separate trial * at which Shevlin testified for the Government in support of those charges. His contention is without merit.

Information 75 Cr. 1176 charged, in essence, that Naslas, Amanatides, and Livas, three officers of Tidal Marine, were involved in a scheme pursuant to which payoffs were made to and received by Shevlin, Metzger and Spartalis, three NBNA bank officers, in exchange for the procuring of loans. Metzger was the sole defendant at the first trial and was acquitted of the charges in the information, although convicted on other charges in the main indictment. The Government's evidence at Naslas' trial established that he conspired with Spartalis, Shevlin, Metzger, Amanatides and Livas to violate Title 18, United States Code, Section 215 and caused and aided and abetted Shevlin's and Metzger's receipt of payoffs in violation of Section 215;** there is no contention that the evidence supporting Naslas' conviction on these charges was insufficient.

Contrary to the central assumption underpinning Naslas' claim, and as the Fifth Circuit held in *United States* v. *Musgrave*, 483 F.2d 327 (5th Cir.), *cert. denied*, 414 U.S. 1023 (1973), the fact that an individual is acquitted in one proceeding does not bar the Government from prosecuting another defendant as an aider and abettor or as a conspirator in a subsequent proceeding, even if the guilt of the individual acquitted in the first proceeding is a necessary predicate for a finding of guilt of the aider and abettor or conspirator in the second:

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* See pages 2-3, *supra*.

** See pages 18-23, *supra*.

> "A judgment in a criminal case operates as res judicata in a second criminal case only where the parties to both proceedings are identical. Smith v. United States, 6 Cir. 1957, 243 F.2d 877; United States v. Wapnick, D.C.N.Y. 1961, 198 F. Supp. 359, aff'd., 2 Cir. 1963, 315 F.2d 96, cert. denied, 374 U.S. 829, 83 S. Ct. 1868, 10 L.Ed. 2d 1052. See 9 A.L.R. 3rd 203, 215. A judgment of acquittal of one defendant in a prior trial does not operate as res judicata in the prosecution of a second defendant in a later trial, even where the same transaction is involved and the second defendant is charged as an accessory to the first. Roberts v. People, 1938, 103 Colo. 250, 87 P.2d 251, cited in Annotation, 9 A.L.R. 3rd 203, 218."

United States v. *Musgrave*, *supra*, 483 F.2d at 332.

Naslas' argument to the contrary is based upon the notion that the doctrine of collateral estoppel as applied in civil actions is fully applicable in all of its ramifications to criminal proceedings. Even assuming, *arguendo*, that this dubious proposition is correct, which the Government disputes,* it does not avail Naslas in the least.

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* The argument, of course, is contrary to the well reasoned opinion in *Musgrave*, *supra*. The only case cited by Naslas of any relevance is *United States* v. *Bruno*, 332 F. Supp. 570 (E.D. Pa. 1971), discussed *infra*. *Ashe* v. *Swenson*, 397 U.S. 436 (1970), on which Naslas relies heavily, established only that the Fifth Amendment guarantee against double jeopardy embodies collateral estoppel. The Supreme Court explicitly defined the collateral estoppel doctrine it found inherent in the Double Jeopardy Clause as an issue once founded "cannot again be litigated *between the same parties* in any future law suit," *id.* at 443 (emphasis added). Here, of course, Naslas has never been previously placed in jeopardy—and thus the *Ashe* decision is inapplicable to him. Similarly, Naslas' argument that "it makes no sense to afford a civil defendant greater protection than a criminal defendant,

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A party cannot be estopped by a prior decision unless he had "a fair opportunity procedurally, substantively and evidentially to pursue his claim the first time." *Blonder-Tongue* v. *University Foundation*, 402 U.S. 313 333 (1971). The Supreme Court included among th

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and . . . any such distinction plainly would be inconsistent with the spirit of due process . . .," Brief at 47, overlooks the fact that Naslas was not in any way affected by the prior proceeding against Metzger. Indeed, society would be injured much more severely by a prohibition against prosecuting individuals accused of serious crimes merely because a jury in a separate proceeding had a reasonable doubt about another defendant's guilt than by restricting the prosecution of civil actions where the issue has previously been decided adversely to the plaintiff. To adopt the rule for which Naslas contends would also place an extraordinary burden on the Government and the judicial system which could only be dealt with in highly undesirable ways. Here, for example, the Government agreed to try Metzger first because Metzger claimed to want a prompt trial. (See transcript of proceedings of December 30, 1975, at 4, 15) Were the rule that for which Naslas contends, the Government might well have had to try this case first, since the evidence of Naslas' guilt on the bribery counts was stronger than Metzger's or, alternatively, might have been forced to ask for a separate trial of Information 75 Cr. 1176, with the result that there would have been three trials of these complex charges rather than two. More generally, to bar the same evidence of the same activities by multiple defendants at a second trial where others have been acquitted at the first would be a strong and undesirable inducement to prosecutors, who would otherwise err on the side of caution, to bring indictments which by their format permit them "to force as many [defendants] as possible to trial in the same proceeding. . . ." *United States* v. *Sperling*, 506 F.2d 1323, 1340 (2d Cir. 1974), *cert. denied*, 420 U.S. 962 (1975).

Finally, Naslas' reliance on the elimination of the requirement of mutuality of estoppel is also misplaced. The relaxation of the requirement of mutuality of estoppel as regards criminal proceedings stands only for the proposition that collateral estoppel and res judicata may be invoked by a *party* to a former criminal proceeding even if the Government could not in turn invoke these doctrines against the defendant. *Cf. United States* v. *Kramer*, 289 F.2d 909, 913 (2d Cir. 1961).

relevant considerations the party's incentive to litigate the issue in question in the first proceeding. *Id.* Naslas' guilt or innocence as a participant in the making of payoffs was, of course, remote from the issues to be resolved at the first trial. The Government would have prevailed against Metzger if it established that Amanatides, Livas or Naslas or any combination of them participated in the scheme to make payoffs to Metzger, irrespective of Naslas' participation. However, "[i]t is . . . a condition upon the conclusive establishing of any fact that its decision should have been necessary to the result in the first suit. That is a protection, for it means that the issue will be really disputed and that the loser will have put out his best efforts." *Evergreens* v. *Nunan*, 141 F.2d 927, 929 (2d Cir.), *cert. denied*, 323 U.S. 720 (1944). Here, it was of no consequence to Metzger's guilt whether the jury concluded that Naslas was involved in the scheme, in which Amanatides was also shown to be a principal actor.*

At Metzger's trial, proof that he received payoffs was based solely on the testimony of Shevlin and on evidence that Metzger had installed an eight hundred dollar safe in his basement shortly after the payoff scheme commenced. However, at Naslas' trial, the Government introduced two $20,000 checks, made out to cash and signed by Naslas, which were used to provide the funds for two of the payoffs. The Government also established that the purported purpose of these checks, as indicated on their face—to furnish cash to the master of the Aquario—was known to Naslas, who managed the Aquario, to be false. Evidence was also presented for

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* Indeed, in the Metzger case the defense never contested Shevlin's testimony that Naslas had been involved in making payoffs, but contended that Metzger was not a party to the scheme. Naturally, the Government's proof was structured to establish that Metzger was a recipient of the payoffs rather than that Naslas participated in making them.

the first time that the photographs of the Tidal Marine Christmas party that Shevlin testified he had received from Naslas at the time he was given the second payoff were made pursuant to Naslas' instructions.* See pages 20-21, *supra*.

Such evidence, of course, if presented at Metzger's trial, would have done little or nothing to further the Government's contention that Metzger was a recipient of the payoffs—which was the principal focus of that trial.**

United States v. *Bruno*, 333 F. Supp. 570 (E.D. Pa. 1971), the only case that lends any support to Naslas' position concerning the scope of collateral estoppel in criminal proceedings, is clearly inapplicable, even assuming that it was correctly decided. In *Bruno*, after the Court had dismissed criminal charges because of the in-

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* In addition, the Government possessed a statement from Naslas, made after indictment and in the presence of his attorneys, in which he admitted giving Shevlin and Metzger envelopes containing the Christmas party photographs. He claimed that he was informed moments afterwards by Amanatides that each envelope had also contained $10,000 in cash. (A. 1735-1736; Court's Exhibit 16 at A. 1897). This statement, initially intended to be offered in the Government's direct case, was not so offered after the defense opening made it clear that the defendants would testify in their own behalf. As the Government anticipated, Naslas testified to the substance of that statement. (Transcript of June 2, 1976, at 2-19; A. 178-186, 1163-1168, 1231-1233). Naslas' statement, of course, would not have been admissible in the trial against Metzger.

** In addition, to have proved the checks used to generate the bribe funds at Metzger's trial would have required injecting a great deal of otherwise irrelevant information about the Aquario into that already complex case. While Metzger had almost nothing to do with the Aquario, it was of course of central importance for reasons apart from the bribes to the trial of this case and the subject of substantial evidence. See pages 28-32, *infra*.

adequacies of the Government's scientific proof of the back dating of a document, the Court subsequently prohibited the Government from introducing the same scientific proof, which it had already ruled was insufficient in the first trial, at the trial of a severed co-defendant. There was no showing or claim that the Government possessed additional scientific evidence that it did not introduce in the first proceeding, or that the Government lacked sufficient interest in the first trial to fully litigate the back dating of the document. Indeed, the Government's case in the first proceeding depended upon establishing the back dating of the document in question. Thus, unlike the situation here, in *Bruno* the Government had a full and fair opportunity to effectively litigate the question in issue, a prerequisite to the invocation of collateral estoppel that *Bruno*—and all cases involving the collateral estoppel doctrine—explicitly recognized. 333 F. Supp. at 576.*

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* Even accepting Naslas' views as to the scope of collateral estoppel, the Government would only have been estopped from proving *Metzger's* participation in the corrupt scheme. There can be no conceivable claim that the Government was estopped from proving that Naslas gave payoffs to Shevlin, or that Naslas entered into a conspiracy with Shevlin, Amanatides, Livas and Spartalis to violate Section 215, because these issues were neither litigated in Metzger's trial nor essential to and determined by the jury's verdict. *United States* v. *Tramunti*, 500 F.2d 1334, 1346 (2d Cir.), *cert. denied*, 419 U.S. 1079 (1974); *United States* v. *Cioffi*, 487 F.2d 492, 498 and n.8 (2d Cir. 1973), *cert. denied sub nom. Ciuzio* v. *United States*, 416 U.S. 995 (1974); *United States* v. *Friedland*, 391 F.2d 378, 382 (2d Cir. 1968); *United States* v. *Davis*, 460 F.2d 792, 795-6 (4th Cir. 1972). The failure to exclude evidence at the second trial of Metzger's participation would clearly be harmless error, Rule 52(a) of the Federal Rules of Criminal Procedure, and indeed Naslas has never claimed that the evidence of Metzger's participation was itself prejudicial to him.

B. Shevlin's Cross-Examination

Naslas' contention that the trial judge improperly interfered with Shevlin's cross-examination by sustaining an objection to a single question is meritless. The contention that the judge's action "was unfair, unfounded and prejudicial both in its implicit attack on counsel's credibility before the jury generally, and in its negative effect on an impeachment . . . which, until then, was showing results," Brief at 50, is frivolous. Moreover, the argument that "defense counsel . . . was made to look improper and perhaps dishonest in the eyes of the jury," Brief at 50, is simply incredible.

Near the close of an extensive cross-examination of Shevlin, the Government objected to an attempt to impeach Shevlin on the basis of the following answer he had given to NBNA lawyers in a question and answer session not under oath during October, 1972:

> Q. "In light of all that, can you tell me how in God's name you recommended a loan on April 28th to Spartan Ideal Shipping Company purportedly owned by Naslas?"
>
> A. "That's a different thing, Naslas was leaving Tidal and going on his own, he did not get along with Livas at all, I think that was his principal reason for leaving; he had a representation from other ship owners I heard from working with Tidal, being an excellent operating man and he was going out on his own and it was really an accommodation to him, it was relatively small item." (A. 1033, 1038-39).

The basis of the Government's objection was that a proper foundation for cross-examination on this particular statement had not been made because there was no threshold showing of inconsistency. Court's Exhibit 10 at 1888A (¶ 1); *see United States* v. *Hale*, 422 U.S. 171

(1975); *Grunnewald* v. *United States*, 353 U.S. 391, 418 (1957). None of the matters discussed in Shevlin's answer to the bank's attorneys were in any way inconsistent with his trial testimony.* Thus, it is clear that an objection to counsel's question was properly sustained.** Indeed, far from being prejudiced on this point, Naslas benefitted by being allowed shortly thereafter to place Shevlin's answer before the jury as substantive evidence.***

The Court's action, in effect, was a direction to defense counsel to "stop testifying." As a matter of law, Judge Pollack was correct in asserting that the prior statement of a witness read by counsel is not evidence unless and until such statement is adopted by the witness. *See*

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* Interestingly, while Naslas recognizes the basis for the Government's objection, Brief at 49, nowhere in his argument does he assert that there was such an inconsistency.

** When the Government made known the basis for its objection, the Court said that it thought the Government was correct. (A. 1035).

*** In pressing this frivolous argument, Naslas only quotes selected portions of the trial transcript and thus places those portions of the record out of context. In sustaining the Government's objection Judge Pollack stated:

> "THE COURT: Mr. Fleming, you have been reading at great length from what you say was written down by somebody at an interview of somebody else. That is not evidence. Your questions are not evidence. It is what this witness answers that is evidence. You have been rattling along with a lot of statements that you say are taken from sources for which there is no foundation.
>
> The objection is sustained.
>
> MR. FLEMING: Your Honor, this is a question and answer type written transcript
>
> THE COURT: Mr. Fleming, that is not evidence. It wasn't offered in evidence. It's not in evidence, and the fact that you read it doesn't make it evidence. That's a statement that you say was made on a prior occasion for which there is no foundation in the record at this time." (A. 1034).

United States v. *Briggs*, 457 F.2d 908 (2d Cir.), *cert. denied*, 409 U.S. 986 (1972); *United States* v. *Borelli*, 336 F.2d 376, 391 (2d Cir. 1964), *cert. denied sub nom. Cinquegrano* v. *United States*, 379 U.S. 960 (1965), Judge Pollack's ruling on the method by which the prior statement should have been authenticated by the witness was a proper attempt to keep matters not in evidence from being brought to the jury's attention, and, as such, was well within his discretion. Fed. R. Evid. 611; *cf. United States* v. *Block*, 88 F.2d 618 (2d Cir.), *cert. denied*, 301 U.S. 690 (1937). In any event, Naslas suffered no conceivable prejudice from the procedure followed by the Court since the statement was authenticated by the witness immediately after the Government's objection had been sustained. *See United States* v. *Bernstein*, 417 F.2d 641, 644 (2d Cir. 1969). Consequently, the matter was fully exposed to the jury, and counsel was free to make any appropriate argument concerning the statement.*

The contention that the Court's action was an "implicit attack on counsel's credibility" and had the effect of making counsel look "improper and perhaps dishonest," is not only incredible, but also completely ignores the cautionary instruction given by the Court as soon as a mistrial motion on this point was made. (A 1054). At that time the Court told the jury that "[a]ny colloquies with the Court by counsel and the Court's rulings are not to be considered as any reflection on either counsel and

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* Naslas seems to contend that Judge Pollack's procedure of requiring counsel to record the basis for an objection in a note, Brief at 50, was somehow improper. This suggestion is totally unwarranted. Judge Pollack's "rule of silence," *id.*, is perfectly consistent with both the letter and the spirit of Fed. R. Evid. 103(c).

must be disregarded by the jury as consideration of the evidence."* (A. 1055).

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* Judge Pollack's remarks in their entirety were as follows:

"Ladies and gentlemen of the jury, I would like to give you some rules on procedure.

During the trial I am being called upon to make rulings on various questions such as when a question put to a witness is objected to or after a question is answered and a motion is made to strike out the answer.

On occasion I sustain objections or will sustain them and on occasion I may overrule or have overruled others.

It is essential in the performance of your duty that when anything is ordered stricken from the record I put it out of your mind and disregard it and, similarly, if a question is asked and an objection to that question is sustained and no answer is given, the question itself should play no part in your consideration of the guilt

No inferences of any kind, whether as to guilt or innocence of the defendants on trial or as to the credibility of any witness, should be drawn from any rulings that I make or have made or from the fact that on occasion I ask certain questions of certain witnesses. My questions are intended only for clarification or to expedite matters. They are not intended to suggest any opinions as to guilt or innocence of the defendant or the defendants or the credibility of anyone who appears before you.

It is neither my intention nor my function to favor one side or the other or to imply that I have any views as to the credibility of any witness or as to the guilt or innocence of any defendant. That is your sole and exclusive function.

Counsel, you must remember, not only have the requirement but indeed it is their duty to thoroughly investigate their case, interview prospective witnesses and present whatever legal points and evidence they believe they have and whatever legal objections they believe should be asserted and seek to bar evidence or proposed evidence on legal ground where that is appropriate.

In doing so, each lawyer is simply performing his sworn duty as a lawyer for a client, or on behalf of a client. Any colloquies with the Court by counsel and the Court's rulings are not to be considered as any reflection

[Footnote continued on following page]

The claim that counsel's "rhythm" was interrupted by the ruling on the objection is plainly frivolous, since it is the Court's duty to rule on objections made by either side and such rulings frequently disrupt "rhythm," as do other normal Court procedures such as recesses.

Naslas' broad contention based on the Court's action in properly sustaining an objection to the use of a single prior statement is frivolous. In any event, Naslas was allowed to cross-examine on the basis of that statement and use it as substantive evidence; hence he suffered no conceivable prejudice.*

POINT V

The trial Court's evidentiary rulings were proper.

A. Flemming's Cross-Examination

Appellants' assertion that the trial judge improperly stated that certain testimony given at trial was not inconsistent with a witness' prior deposition testimony, Brief at 51-52, is totally without merit.

Joseph Peter Flemming, a maritime attorney who represented NBNA in connection with the Aquario transac-

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on either counsel and must be disregarded by the jury as consideration of the evidence.

It is the evidence which will guide your deliberations in this case if and when the case is put to you, and nothing that has been said in any way is to be taken by you as an evaluation of any witness or any other testimony or credibility.

I have refrained as far as reasonably feasible, as you may have noticed, for half-hours or hours on end from saying anything in this case, and only then when called upon by counsel. That is their function to call upon me and it is my function to order the proper conduct of the trial.

Please bear in mind these instructions." (A. 1054-1056).

* Naslas' contentions concerning the prosecutor's summation and the Court's instructions are discussed, respectively, in Points III B2 and II, *supra*.

tion, testified on direct examination that to the best of his recollection the information concerning the term of the Aquario charter had been supplied by Hanlon (A. 425). On redirect, Flemming identified a letter that he had written to Hanlon asking him to supply certain information relating to the term of the charter and said that as a result of his inquiry the information concerning the term of the charter was placed in the loan agreement. (A. 451-452). On recross, Flemming testified that he did not have specific recollection of the manner in which the information was relayed to him, but that it had been done prior to the closing. (A. 455).

At this point, defense counsel attempted to impeach Flemming's testimony by cross-examining him on answers he had given in a civil deposition during February, 1976.* The questions and answers in the deposition were as follows:

> "Q. In connection with the work that you performed on this transaction did you or anyone acting on your behalf undertake an investigation of the—to use the words of Exhibit 10—three-year time charter with Shell Oil Company?"
>
> A. We obtained certain documentation respecting that charter, yes.
>
> "Q. What was the documentation?
>
> "A. A copy of such a purported charter, a certificate from Livas representing that charter to be a true and correct charter." ** (A. 455-456).

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* In their brief, appellants' observe that Flemming's deposition was in a case in which he was a defendant charged with civil fraud. Brief at 52-53. This was not, however, part of the trial record.

** This certificate, which contained a false representation as to the charter, was delivered at the closing by Hanlon and was attached to the charter.

As the record indicates, the Court's remarks were neither "sua sponte" nor improper. Rather, they were the Court's explanation for sustaining the Government's objections to the following argumentative questions asked by the defense:

> "Q. And did you not unde oath say that you had received information verbally from James Hanlon?" *
>
> "Q. Any time during these 334 pages of examination, did you say under oath that Jim Hanlon had orally provided you with the term of the charter prior to closing?" ** (A. 457).

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* After the objection to this question was sustained, counsel asked the next question, which was also objected to and which objection was also sustained. The following then occurred:

> [The Court] "It's very simple, Mr. Fleming. Was he asked that question. If he was, just read the question. Read him any question which says did Hanlon furnish you any information.
>
> MR. FLEMING [defense counsel]: I object to that, your Honor. He wasn't asked that. He was asked the question —
>
> THE COURT: He said he received documentation. Now you want to know whether he got oral information from Hanlon and you asked him whether in 334 pages there is anything about that. Show him the question and he can give the answer.
>
> MR. FLEMING: That was the only question on the transaction.
>
> THE COURT: If that was the only question, that explains it by itself.
>
> MR. FLEMING: Did your Honor use the word 'documentation" in the question?
>
> THE COURT: Mr. Fleming, go on to your next question.
>
> MR. FLEMING: respectfully except. I have nothing further." (A. 457-458).

** This was not the only time during the course of the trial that the defense attempted to use prior statements of a witness in an improper manner without establishing any foundation as to inconsistency. See 1027, 520, 530, 513.

While a witness may be impeached by prior inconsistent statements, the trial judge, as a preliminary matter, has the power to decide whether in fact there was an inconsistency. *See United States* v. *Hale*, 422 U.S. 171 (1975).* In the present case, the decision by the trial judge that there was no inconsistency found ample support in the record. The deposition question only asked for a recitation of any investigation Flemming had conducted concerning the Aquario charter. The answer and follow-up question related to documentation received by Flemming. Flemming's trial testimony, on the other hand, did not concern any investigation he had undertaken, but only the manner in which he had been informed of the terms of the charter—a question never asked during the course of the deposition. The Court, in its remarks to which objection is made, was merely explaining its ruling on the plainly objectionable questions.**

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* It is well settled that the trial judge may limit the scope of cross-examination, and such rulings are reviewable only in the event of abuse of discretion. *See e.g., United States* v. *Jenkins*, 510 F.2d 495, 500 (2d Cir. 1975); *United States* v. *Kahn*, 472 F.2d 272, 281 (2d Cir.), *cert. denied*, 411 U.S. 982 (1973).

** In any event, Judge Pollack explicitly told defense counsel that he was free to argue an inconsistency based on the question concerning the investigation conducted on the Aquario charter. (A. 490). As to his comments to which appellants now take exception, the trial judge had this to say out of the presence of the jury:

"I don't know what point you are trying to make to me. I am saying to you that you read a question from the deposition which asked for the documentation, and that's all I said, and that's all the jury understood me to say. *And all of this controversy was something that was created here because you asked another question that was improper and you wanted to know whether the man in 356 pages said anything about Hanlon.*" (A. 491) (emphasis added).

Judge Pollack's ruling was thus within his discretion. Moreover, since the appellants were allowed to argue the inconsistency of the prior statement (A. 490), the ruling caused them no conceivable prejudice.

B. The Naslas Resignation Letter

Contrary to Naslas' contention, Brief at 52-54, the trial Court correctly excluded most of a letter written by Naslas to his co-conspirator Harry Amanatides in January 1972. The Court did admit a portion of the letter stating Naslas' intent to resign from Tidal Marine. The remainder of the letter was properly excluded since (1) it was at best a self-serving prior consistent statement for which no foundation had been laid and (2) it was not relevant.

The letter from Naslas to Amanatides was admittedly offered to corroborate Naslas' trial testimony that he "told Amanatides [that] he would have nothing to do with Tidal if Livas took a position of authority." Brief at 52. As such, it was clearly a self-serving prior consistent statement that was properly excluded because the defense had not shown that it was being offered "to rebut an express or implied charge against [Naslas] of recent fabrication. . . ." Fed. R. Evid. 801(d)(1)(B).* See also *United States* v. *Lam Muk Chin*, 522 F.2d 330, 331 (2d Cir. 1975); *Hickory* v. *United States*, 151 U.S. 303 (1894).

Moreover, the excluded portion of the letter was not relevant, and as such was excludable by the trial judge in the exercise of his sound discretion, which "will not be disturbed on appeal except for grave abuse." *United States* v. *Gottlieb*, 493 F.2d 987, 992 (2d Cir. 1974), quoting *Hardy* v. *United States*, 335 F.2d 288 (D.C. Cir. 1964); *see also*,

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* The portion of the letter which was admitted over the Government's objection is distinguishable from the excluded portion since it was arguably a verbal act.

United States v. *Catalano*, 491 F.2d 268, 273 (2d Cir.), *cert. denied*, 419 U.S. 825 (1974); *United States* v. *Kahn*, 472 F.2d 272, 280 (2d Cir.), *cert. denied*, 411 U.S. 982 (1973); *United States* v. *Frankenberry*, 387 F.2d 337 (2d Cir. 1967). The argument that Naslas' ill feelings toward Livas were probative of his innocent state of mind is belied by the fact that there was no evidence at trial to suggest that Naslas had anything but the slightest contact with Livas.* In addition, any claim of relevance is clearly refuted by the fact that Naslas continued with Tidal Marine for six months after the letter and participated in fraudulent activities during this period. Furthermore, to the extent that the letter may have had marginal relevance in corroborating Naslas' testimony, its probative value, if any, would have been clearly outweighed by the distracting impact of the remainder of this two page rambling and self-serving document. Defendants' Exhibit T at A. 1958-1959. *See Hamling* v. *United States*, 418 U.S. 87, 124, 127 (1974); *United States* v. *Green*, 523 F.2d 229, 237 (2d Cir. 1975), *cert. denied*, 423 U.S. 1074 (1976); *United States* v. *Jenkins*, 510 F.2d 495, 500 (2d Cir. 1975); *United States* v. *Kahn*, 472 F.2d 272, 279, 281 (2d Cir.), *cert. denied*, 411 U.S. 982 (1973); *United States* v. *Mahler*, 363 F.2d 673, 676-78 (2d Cir. 1966); *United States* v. *Bowe*, 360 F.2d 114-16 (2d Cir), *cert. denied*, 385 U.S. 961 (1966); Fed. R. Evid. 403.**

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* There was evidence that Naslas was present at two luncheon meetings with Livas in the spring of 1972 at which Livas asked the bank officers at NBNA for continued financial support. However, the record is replete with references to Naslas' close association with Amanatides, who—despite appellants' claim that Livas was the undisputed principal architect of the fraud, Brief at 52, was a leading if not *the* leading individual in implementing the Tidal Marine fraud.

** In any event, Naslas' testimony concerning his reason for leaving Tidal Marine was corroborated through the cross-examination of a government witness, John Shevlin. Shevlin testified that Naslas' principal reason for leaving Tidal Marine was his inability to get along with Livas. (A. 1038-40).

C. Hanlon's Cross-Examination

The trial Court properly allowed the Government to question Hanlon concerning his continued association with Amanatides after Hanlon admittedly learned that there had been fraud involved in Tidal Marine's affairs. (A. 1438-1441). Prior to this line of questioning, Hanlon had conceded that, in addition to being Tidal Marine's attorney, he was a close personal friend of Amanatides, socialized with him on occasion and thought well of him. The entire thrust of the defense case was that Hanlon was an innocent dupe of Amanatides. The fact that Hanlon continued to associate with Amanatides after the discovery that there was fraud involved in Tidal Marine's affairs was probative of Hanlon's knowledge and intent prior to that time. Accordingly, the trial judge did not abuse his discretion in ruling that such evidence was relevant. *See United States* v. *Catalano, supra.*

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

ROBERT B. FISKE, JR.,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

JEFFREY I. GLEKEL,
MARC MARMARO,
FREDERICK T. DAVIS,
Assistant United States Attorneys,
Of Counsel.

APPENDIX

GX 900 A

GX 900 C

GX 900 F

GX 900 E

GX 900 B

[For the convenience of the Court these Exhibits are reproduced on the opposite page.]

GX 900A

VESSEL	FINANCING OF PURCHASE	AMOUNT	CHARTER *	REFINANCING	AMOUNT	CHARTER* (IF DIFFERENT)
TRECHON	BANK OF AMERICA (BOA) DEC. 9, 1970	$4,000,000	6 MONTHS CHARTER TO BE FOLLOWED BY 3 YEAR CHARTER	NATIONAL BANK OF NORTH AMERICA (NBNA) SEPT. 28, 1971	$4,000,000	
HARILION	NBNA JAN. 22, 1971	550,000	MITSUI LINES - 3 YEARS			
KYRILION	NBNA JAN. 22, 1971	550,000	PORT LINE/BLUE FUNNEL - 3 YEARS			
ILION	NBNA FEB. 8, 1971	550,000	UNIMAR SEETRANSPORT - 3 YEARS			
MARILION	NBNA FEB. 17, 1971	550,000	JAPAN LINES - 3 YEARS			
AQUARIO	FIRST NATIONAL BANK OF BOSTON JULY 16, 1971	780,000	SHELL VEN. - 33 MONTHS	NBNA FEB. 11, 1972	1,500,000	SHELL VEN. - 42 MONTHS
TROPIS	BOA JULY 29, 1971	1,350,000	BP - 3 YEARS	NBNA DEC. 24, 1971	5,500,000	BP - 5 YEARS
TEKTON	BOA MAY 24, 1971	2,400,000	BP - 3 YEARS	NBNA DEC. 24, 1971		BP - 5 YEARS
TACHYS	BOA APRIL 14, 1971	3,250,000	BP - 3 YEARS	NBNA FEB. 4, 1972	4,500,000	BP - 5 YEARS
ARIS	NBNA DEC. 29, 1971	4,266,000	WINTERSHALL - 5 YEARS			
6 DRY CARGO	NBNA AUG. 11, 1971	3,300,000	TRANSOCEANIC SHIPPING - 3 YEARS			
MAY/JUNE	WILLIAMS and GLYN'S JULY 22, 1971	**		NBNA NOV. 3, 1971	1,700,000	TRANSOCEANIC SHIPPING - 3 YEARS
TAGMA	NBNA JUNE 16, 1972	3,200,000	AGIP - 1 YEAR, TO BE FOLLOWED BY MONTECATINI EDISON CHARTER FOR 3 YEARS ***			

* AS REPRESENTED TO BANK

** $400,000 MORTGAGE IN FAVOR OF WILLIAMS AND GLYN'S DISCHARGED AT TIME OF NBNA FINANCING

*** P. WIGHAM RICHARDSON CHARTER WAS SUBSTITUTED FOR MONTECATINI EDISON CHARTER PRIOR TO CLOSING.

GX 900C

JAMES D. HANLON LEGAL RECORDS

TRANSACTION	DATE (a)	AMOUNT (g)	DESCRIPTION
TRECHON	DEC. 23, 1969 (b)	$ 350	Formation of Victory Development
	OCT. 6, 1970	350	Formation of Deneb Navigation
	NOV. 12, 1970	350	Formation of Kowloon Tankship
	MARCH 16, 1971	2,170	Fleet Mortgage with Bank of America (BOA)
	SEPT. 9, 1971	1,500	Financing at National Bank of North America (NBNA)
HARILION	MAY 22, 1970	350	Formation of Interocean Brokerage Ltd.
KYRILION	SEPT. 9, 1970	350	Formation of Transoceanic Shipping Co. of Piraeus Ltd.
ILION	OCT. 5, 1970	350	Formation of Unimar Seetransport GMBH Ltd.
MARILION	DEC. 11, 1970	350	Formation of The Scindia Steam Navigation Co. Ltd. of Bombay
	DEC. 29, 1970	2,750	Mortgage of Harilion with NBNA
	DEC. 29, 1970	2,750	Mortgage of Kyrilion with NBNA
	JAN. 27, 1971	2,750	Mortgage of Ilion with NBNA
	FEB. 5, 1971	2,750	Mortgage of Marilion with NBNA
	AUG. 24, 1971	350	Formation of Mitsui-O.S.K. Lines K.K. of Tokyo Limited
	AUG. 24, 1971	350	Formation of Port Line-Blue Funnel Lines of London Limited
	SEPT. 9, 1970	350	Formation of Transoceanic Shipping Co. of Piraeus Ltd.
AQUARIO	APRIL 19, 1971	7,300	Purchase of Vessel
	JUNE 8, 1971		Formation of Southeast Tanker Company Limited
	SEPT. 15, 1971	4,750	Deduction From Hire

Dry Cargo Vessels

A. Corporate Formation

SANDRA N	OCT. 6, 1970	350	Formation of Eltanin Navigation
MARINA	MARCH 22, 1971	350	Formation of Canopus Navigation
ANGELICA	MARCH 22, 1971	350	Formation of Bellatrix Navigation
TRIAS	MARCH 22, 1971	350	Formation of Aldebaran Navigation
DESPINA N	MARCH 22, 1971	350	Formation of Acamar Navigation
MERSINIDI	MARCH 22, 1971	350	Formation of Capella Navigation
MARIA K	MARCH 22, 1971	350	Formation of Markab Navigation
SEMIRA	MARCH 22, 1971	350	Formation of Denebola Navigation
NORTHERN VENTURE	OCT. 6, 1970	350	Formation of Alioth Navigation
POLA N	MARCH 22, 1971	350	Formation of Sirius Navigation
CAPETAN PANTELIS	MARCH 22, 1971	350	Formation of Atria Navigation

GX 900C

JAMES D. HANLON LEGAL RECORDS

TRANSACTION	DATE	AMOUNT	DESCRIPTION
B. Tidal Marine Purchase			
Purchase of Dry Cargo Vessels from Union Commercial Steamship	MARCH 16, 1971	$ 1,500 2,250 (c)	
Purchase of Capetan Pantelis from Union Commercial Steamship	JULY 7, 1971	300	
C. Financing			
NBNA	JULY 29, 1971	9,000	Fleet mortgage of 6 Dry Cargo vessels
Farber Commercial	MARCH 16, 1971	(c) 2,250	Mortgage of Maria K and Semira
General Electric Pension Fund	JULY 7, 1971	(d) 12,500	Mortgage of Pola N and Northern Venture (renamed Navishipper)
NBNA	OCT. 27, 1971	2,500	Mortgage of May and June
TROPIS AND TEKTON			
TROPIS	OCT. 6, 1970	350	Formation of Alkaid Navigation
TEKTON	OCT. 6, 1970	350	Formation of Antares Navigation
PURCHASE BY TIDAL MARINE	MARCH 6, 1971	(e) 5,750	Purchase of Ketty renamed Tropis and Michail A. Karageorgis renamed Tekton
TROPIS	MARCH 17, 1970	350	Formation of Aries Navigation
TEKTON	JUNE 16, 1970	350	Formation of Pisces Navigation
NBNA	DEC. 13, 1971	1,800	Loan on Tropis and Tekton
ARIS	DEC. 20, 1971	1,950	Sale of Aris
TACHYS	OCT. 6, 1970	350	Formation of Arcturus Navigation
	MARCH 16, 1971	(f) 5,750	Purchase of Messiniaki Floga renamed Tachys
	APRIL 6, 1971	1,350	Mortgage of Tachys with BOA

(a) Refers to date on which file was opened
(b) Refers to date of incorporation.
(c) Includes fee for Purchase and Mortgaging of Maria K and Semira.
(d) Includes fees billed to Achernar Navigation Corp and Taurus Navigation Corp.
(e) Includes purchase of Messiniaki Armonia (Techni) and Messiniaki Floga (Tachys).
(f) Includes purchase of Ketty (Tropis), Michail A. Karageorgis (Tekton) and Messiniaki Armonia (Techni).
(g) Refers to amount billed.

.6 X 900 F

TRECHON

PURCHASE AND FINANCING AT BANK OF AMERICA (BOA)

DATE		
SEPT. 8, 1970	HANLON bills for formation of Victory Development Corporation (Victory).	Ex. 336A
OCT. 7, 1970	HANLON caused the formation of Deneb NAvigation Corporation (Deneb).	Exs. 336A, 340
NOV. 3, 1970	HANLON caused the formation of Kowloon Tankship Company (Kowloon).	Exs. 336B, 349
OCT. 21, 1970	WEST SHORE TANKERS Ltd. (West Shore) contracts to purchase Petrolasa (renamed Trechon) for $3,500,000.	Ex. 287
DEC. 2, 1970	Sheneman writes sellers stating that Deneb would take title to vessel.	Ex. 291
DEC. 7, 1970	Purchase price reduced to $3,385,000.	Ex. 288
OCT. 22, 1970	BOA approves a $12,400,000 line of credit for Tidal Marine International Corp. (TMI) to finance the purchase of Tichi, Tranos, Triton and Tama subject to the condition that financing be at the lower of 75% of contracted purchase price or 60% of market value.	Exs. 280, 284
NOV. 20, 1970	Permission is sought by BOA in London to substitute Trechon for Tranos. TMI requested a $4,000,000 loan on Trechon, the purchase price of which was said to be $5,500,000.	Exs. 280, 281
DEC. 1, 1970	BOA approves $4,000,000 loan on Trechon as representing 72.7% of the purchase price.	Ex. 280
DEC. 9, 1970	Loan of $4,000,000 to Deneb closed in New York. Deneb was represented by HANLON, Harry Amanatides was also present. HANLON took closing documents with him.	Exs 280, 281

USE OF PROCEEDS

DEC. 9, 1970	Amanatides orders distribution of proceeds as follows: $3,035,000 to Commercial Petrolera Latinoamericana, S.A., Caracas (sellers of vessel), $750,000 to Kowloon and $215,000 to Victory.	Exs 285, 287
DEC. 16, 1970	HANLON receives commission of $16,925 on Trechon.	Exs 294H, 415
DEC. 16, 1970	HANLON deposits $750,000 check to Kowloon in Kowloon account at Irving Trust Company (Irving) and directs that $425,000 be placed in a time deposit and $325,000 be held in a demand account. Signature cards and resolutions for Kowloon account list HANLON as president and Alice E. Hanlon as director.	Exs. 294A, 294B, 294C, 294E, 294P

GX 900F

TRECHON

USE OF PROCEEDS (Continued)

DATE		
MARCH 5, 1971	HANLON instructs Irving to distribute time deposit at maturity as follows. $325,000 to West Shore and $100,000 to First National City Bank, Nassau, for the account of Salvador Huerta. The $325,000 in demand account was placed in time deposit.	Exs. 294D, 294G, 294O
JULY 13, 1971	HANLON directs transfer from Kowloon time deposit of $35,000 and $75,000 for accounts of Southeast Tankers Co. Ltd. and Kowloon at First National Bank, Boston (FNBB).	Ex. 294D
JULY 21, 1971	HANLON directs $150,000 be transferred from Kowloon time deposit to FNBB.	Ex. 294J
JULY 30, 1971	$57,500 transferred from West Shore account at Irving to Kowloon account.	Ex. 294N

HANLON'S LOANS AND COLLATERAL

MARCH 4, 1971	HANLON borrows $20,000 from Irving which is guaranteed by Kowloon. HANLON deposits $17,980 in personal checking account on March 10, 1971.	Exs. 294D, 294H
JULY 13, 1971	HANLON borrows $20,000 from Irving, disbursed by a $17,980 bank draft and $2,000 in travelers checks. Exs. 294D, 294I. Draft deposited in HANLON'S personal savings account.	Ex. 334A
OCT. 28, 1971	HANLON borrows $10,000 from Irving and authorizes Kowloon account to serve as security for all personal loans.	Exs. 294J, 294K
DEC. 23, 1971	HANLON borrows $10,000 from Irving and deposits $9,000 of proceeds in his personal checking account.	Exs 294L, 294M
JAN. 14, 1972	HANLON borrows $20,000 at FNBB secured by Kowloon account at FNBB.	Exs 295A, 295B, 298
APRIL 27, 1972	HANLON borrows $55,000 from FNBB secured by Kowloon account at FNBB.	Exs. 296, 297B, 298
DEC. 8, 1972	Irving writes HANLON demanding payment of loans aggregating $60,000 by Jan 8, 1973.	Ex 294D
JAN. 8, 1973	Irving charges $59,687.58 from Kowloon account against HANLON'S personal loans.	Ex 294A

GX 900E

AQUARIO

PURCHASE AND FINANCING AT FIRST NATIONAL BANK OF BOSTON

DATE		
JUNE 7, 1971	HANLON caused the formation of Southeast Tanker Co. Ltd.	EX. 342
JULY 8, 1971	HANLON transferred $79,500 from the account of Kowloon Tankship Co. Ltd. to account of seller as 10% downpayment on the purchase price of the Aquario, which was $795,000.	EX. 294E
JULY 11, 1971	HANLON prepared corporate resolutions for Southeast Tanker authorizing its purchase of the Aquario.	EX. 317C
JULY 13, 1971	HANLON transferred $35,500 from Kowloon Tankship to account of Southeast Tanker at the First National Bank of Boston.	EX. 294J
JULY 15, 1971	Southeast Tanker issued 500 shares of stock, 100 of which were issued to HANLON.	EX 302
JULY 16, 1971	Southeast Tanker obtained a loan of $780,000 from the First National Bank of Boston to finance the purchase of the Aquario. The loan was secured by a 33 month time charter to Compania Shell de Venezuela Ltd. and based upon a valuation of $1,300,000 on the Aquario.	EXS. 307, 308
JULY 16, 1971	HANLON sent a telex to Captain Huerta specifically referring to charter party on the Aquario.	EXS. 303, 416
JULY 16, 1971	HANLON registered 2 bills of sale for the Aquario. One bill of sale conveyed the Aquario from the seller to Brent Shipping Co. Ltd. at a purchase price of $795,000. The second, signed in behalf of Brent Shipping by Paul Katritsis, conveyed the Aquario from Brent Shipping to Southeast Tanker at a purchase price of $1,300,000.	EXS 327, 329A, 329B, 330A, 330B, 331A
JULY 16, 1971	HANLON as attorney for Southeast Tanker executed a first preferred mortgage on the Aquario in favor of the FNBB, which represented that all the issued shares of Southeast Tanker were owned by Transoceanic Shipping Co.	EXS. 306, 325

3 X 900 E

AQUARIO

OPERATION OF AQUARIO

DATE		
OCT. 14, 1971	HANLON met with Captain Huerta in Curaco in regard to Aquario	EX. 300A
LATE OCT. 1971	HANLON met with Captain Huerta, Amanatides and Sheneman in London concerning the operation of the Aquario.	
JAN. 1972	HANLON met with Huerta and Sheneman in Caracas concerning the operation of the Aquario.	EXS. 405, 406
JAN. 28, 1972	HANLON wrote a letter to Captain Nout of Compania Shell de Venezuela Ltd. recording objections to charterhire deductions made by Shell and referring specifically to a clause in the charter with Shell.	EX. 5A

REFINANCING AT NATIONAL BANK OF NORTH AMERICA

DATE		
EARLY FEB. 1972	HANLON submitted to the National Bank of North America and its attorney, Joseph Peter Flemming, a charter which stated that Compania Shell de Venezuela Ltd. had chartered the Aquario for 42 months.	EX. 41
FEB. 11, 1972	HANLON signed a loan agreement with the NBNA as attorney for Southeast Tanker under which the NBNA loaned $1,500,000 to Southeast Tanker secured by a 42 month time charter with Compania Shell de Venezuela. The loan agreement stated that the Aquario was on charter to Compania Shell de Venezuela Ltd. for 42 months.	EX. 41

G X 900 B

DATE	CHECKS MADE OUT TO CASH, SIGNED BY COSTAS NASLAS, AND DRAWN ON NATIONAL BANK OF NORTH AMERICA ACCOUNTS	BANK OF AMERICA CASH TO MASTER WIRE TRANSFERS BY ORDER OF COSTAS NASLAS	LOCATION OF AQUARIO
JAN. 5, 1972		$15,000 FROM BOA NEW YORK TO BOA WILLEMSTAD, CURACAO EXS 3B, 10B	PUERTO MIRANDA EX 11A
JAN. 6, 1972	$20,000 ENDORSED BY PAUL KATRITSIS EX 53A		CURACAO EXS 11A, 11C
JAN. 28, 1972	$20,000 ENDORSED BY PANAYOTIS PYRPYRIS EX 17G		CURACAO EXS 11E, 11D
FEB. 9, 1972		$10,000 FROM BOA NEW YORK TO BOA WILLEMSTAD, CURACAO EXS 3A, 10A	CURACAO EX 403

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AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JEFFREY I. GLEKEL being duly sworn, deposes and says that he is employed in the office of the United States Attorney for the Southern District of New York.

That on the 26TH day of OCTOBER, 1976, he served ~~3 copies~~ of the within brief by placing the same in a properly postpaid franked envelope addressed:

PETER FLEMING, JR., ESQ.
CURTIS, MALLET-PREVOST, COLT & MOSLE
100 WALL STREET
NEW YORK, N.Y. 10005

And deponent further says that he sealed the said envelope and placed the same in the mail box for mailing at One St. Andrew's Plaza, Borough of Manhattan, City of New York.

Jeffrey I. Glekel

Sworn to before me this
26TH day of October, 1976

Jeanette Ann Grayeb

JEANETTE ANN GRAYEB
Notary Public, State of New York
No. 24-1541575
Qualified in Kings County
Commission Expires March 30, 1977